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# BULLETIN

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

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### DIRECTORY

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# DOCKET

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New Case Filed Up to January 10, 2012  
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**190-11-BZ**

1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street., Block 2993, Lot(s) 27, Borough of **Bronx, Community Board: 03**. Variance (§72-21) to legalize the use of an existing manufacturing building at the premises for Use Group 6 retail stores. R7-1 zoning district. R7-1 district.  
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**191-11-BZ**

1246 77th Street, located on 77th Street between 12th and 13th Avenue., Block 6243, Lot(s) 24, Borough of **Brooklyn, Community Board: 10**. Special Permit (73-622) for the In-Part Legalization and an Enlargement to an existing single family home contrary to ZR 23-141(b) for maximum allowable floor area. R 4-1 zoning district. R4-1 district.  
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**192-11-BZ**

2977 Hylan Boulevard, north side of Hylan Boulevard between Isabella Avenue and Guyon Avenue., Block 4301, Lot(s) 36 & 39, Borough of **Staten Island, Community Board: 03**. Variance (§72-21) to allow for the development of a Use Group 3 child care center contrary to §23-35 (Minimum Lot Width/Area), §25-31 (Required Parking) and §25-62 & §35-68 (Parking Lot Maneuverability). R2 / LDGMA district. R2 district.  
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**193-11-BZ**

215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot(s) 42, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for an enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district. R3-1 district.  
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**194-11-A**

940 Richmond Avenue, west side of Richmond Avenue at northwest corner of Richmond Avenue and Monsey Place., Block 1706, Lot(s) 41, Borough of **Staten Island, Community Board: 01**. Appeal seeking a determination that the Department of Buildings improperly denied an application for a permit for a new building on a new zoning lot based on an erroneous decision that separate adjacent zoning lots under separate ownership must be considered a single zoning lot pursuant to §36-21 of the New York City Zoning Resolution. R3-2/C1-1- Zoning district. R3-2/C1-1 district.  
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**195-11-BZ**

2070 East 21st Street, West side of East 21st Street, between Avenue S and Avenue T., Block 7299, Lot(s) 39, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district. R3-2 district.  
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**196-11-A**

178-06 90th Avenue, southeast corner of the intersection of 90th Avenue and 178th Street., Block 9894, Lot(s) 47,48,51, Borough of **Queens, Community Board: 12**. An appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning district regulations. R4-1 Zoning District. R4-1 district.  
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**197-11-BZ**

329 Wyckoff Avenue, Located on the northeast corner of the intersection formed by Wyckoff and Myrtle Avenues and Palmetto Street, Block 3444, Lot(s) 33, Borough of **Brooklyn, Community Board: 05**. Special Permit (§73-36) to permit the operation of a physical culture establishment on a portion of the first and second floors of an existing two-story building. C4-3 zoning districts. C4-3 district.  
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**1-12-BZ**

434 6th Avenue, southeast corner of 6th Avenue and West 10th Street., Block 573, Lot(s) 6, Borough of **Manhattan, Community Board: 02**. Special Permit (§73-36) to permit the operation of a physical culture establishment/Yoga facility on the second floor of a six story commercial building. C4-5(LC) district.  
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**2-12-BZ**

95-36 115th Street, 335.29' south of intersection of 95th Avenue and 115th Street., Block 9416, Lot(s) 24, Borough of **Queens, Community Board: 09**. Application filed to permit construction of a cellar and three-story, two-family dwelling on a vacant lot that does not provide required side yards (two side yards of 3.01 proposed, 5' required), does not provide two required parking spaces (one space provided), and locates a proposed parking space within the proposed front yard contrary to the zoning resolution. R5 district.  
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# DOCKET

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**3-12-BZ**

1913 East 28th Street, east side of East 28th Street, 100' south of Avenue S., Block 7307, Lot(s) 88, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family residence located within an r4 zoning district, contrary to floor area and side yard regulations. R4 district.

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

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# CALENDAR

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**JANUARY 31, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 31, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**611-76-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Capitol One Bank, owner.

SUBJECT – Application November 15, 2011 – Extension of Term of a previously granted Variance (72-21) for the continued operation of an off-site accessory parking facility for a bank (Capital One) which expires on February 15, 2012. R4 zoning district.

PREMISES AFFECTED – 43-17/21 214<sup>th</sup> Place, east side 161.24' north of Northern Boulevard, Block 6301, Lot 9, 10, 11, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**540-86-BZ**

APPLICANT – Slater & Beckerman, LLP, for 148 Jamaica Avenue Co., LLC, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of a previously granted Special Permit (73-42) for the continued operation of a one story UG6 commercial building (Key Food); an Amendment of the resolution to eliminate the restriction on hours of operation. C4-2A/R6B zoning district.

PREMISES AFFECTED – 32-11/32-21 Newton Avenue, northwest corner of Newton Avenue and 33<sup>rd</sup> Street, Block 619, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**162-95-BZ & 163-95-BZ**

APPLICANT – Sheldon Lobel, P.C., for Salvatore Bonavita, owner; Pelham Bay Fitness Group, LLC, lessee.

SUBJECT – Application April 3, 2011 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (Planet Fitness) which expired on July 30, 2006; Waiver of the rules. C2-4/R6 and R7-1 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, Southern side of Westchester Avenue between Mahan Avenue and Hobart Avenue. Block 4196, Lots 9, 11 & 13, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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**327-04-BZ**

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the enlargement of an existing Synagogue and School (Beth Gavriel), in an R1-2 zoning district, which expired on June 7, 2009.

PREMISES AFFECTED – 66-35 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, between 66<sup>th</sup> Road and 67<sup>th</sup> Avenue, Block 2175, Lot 1, Borough of Queens.

**COMMUNITY BOARD #6Q**

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**APPEALS CALENDAR**

**186-11-A**

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for 170 Broadway NYC LP c/o Highgate Holdings, Inc., owner.

SUBJECT – Application December 8, 2011 – Application pursuant to Multiple Dwelling Law ("MDL") Section 310(2)(a) for a variance of the court and yard requirements of MDL Section 26 to facilitate the conversion of an existing office building to a transient hotel. C5-5/LM zoning district.

PREMISES AFFECTED – 170 Broadway, southeast corner of Broadway and Maiden Lane. Block 64, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**JANUARY 31, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 31, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**108-11-BZ thru 111-11-BZ**

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

SUBJECT – Application August 8, 2011 – Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use as per §32-433. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 10, 12, 14 & 16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane. Block 4065, Lots 27, 25, 24 & 21, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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# CALENDAR

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**112-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Louis N. Petrosino, owner.

SUBJECT – Application August 9, 2011 – Variance (§72-21) to legalize the enlargement of the zoning lot of a previously approved scrap metal yard (UG 18) which is contrary to §32-10. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54<sup>th</sup> Street. Block 6947, Lot 260. Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**175-11-BZ**

APPLICANT – Raymond H. Levin, for Clinton Park Holdings, LLC, owners.

SUBJECT – Application November 10, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Mercedes House*). C6-3X (Clinton Special District).

PREMISES AFFECTED – 550 West 54<sup>th</sup> Street, aka 770 11<sup>th</sup> Avenue, bounded by 11<sup>th</sup> Avenue, West 54<sup>th</sup> Street, 10<sup>th</sup> Avenue and West 53<sup>rd</sup> Street, Block 1082, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #9M**

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**179-11-BZ**

APPLICANT – Herrick, Feinstein LLP, for Ridgedale Realty Company, LLC, owner; Kings of Queens Retro/Retro Fitness of Glendale, lessee.

SUBJECT – Application November 30, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (New Retro Fitness) to be located within 1-story existing building. M1-1 zoning district.

PREMISES AFFECTED – 65-45 Otto Road, between 66<sup>th</sup> Street and 66<sup>th</sup> Place. Block 3667, Lot 625. Borough of Queens.

**COMMUNITY BOARD #5Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 10, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**789-45-BZ**

APPLICANT – Walter T. Gorman, P.E., for Woodside 56 LLC, owner; Getty Properties Corp., lessee.

SUBJECT – Application July 6, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a (UG16) gasoline service station (*Getty*) which expired on July 13, 2006; Extension of Time to Obtain a Certificate of Occupancy which expired February 4, 2005; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/56-20 Broadway, south east corner of 56<sup>th</sup> Street, Block 1195, Lot 44, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Omair Khanzada.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for a previously granted variance for a gasoline service station; and

WHEREAS, a public hearing was held on this application on November 15, 2011 after due notice by publication in *The City Record*, with a continued hearing on December 13, 2011, and then to decision on January 10, 2012; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application; and

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

WHEREAS, the site is located on the south side of Broadway between 56<sup>th</sup> Street and 57<sup>th</sup> Street, partially within an M1-1 zoning district and partially within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 16, 1946 when, under the subject calendar number, the Board granted a variance to permit the

site to be occupied by a gasoline service station for a term of ten years; and

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

WHEREAS, on May 27, 1998, the Board granted an extension of term for a period of ten years, which expired on July 13, 2006; a condition of the grant was that a certificate of occupancy be obtained by May 27, 1999; and

WHEREAS, subsequently, the Board granted several extensions of time to obtain a certificate of occupancy; most recently, on February 4, 2003, the Board granted a two-year extension of time to obtain a certificate of occupancy, to expire on February 4, 2005; and

WHEREAS, the applicant states that a new certificate of occupancy has not been obtained due to internal operating changes at Getty; and

WHEREAS, the applicant now seeks an additional ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board raised concerns about the open Fire Department violations issued in 2007 and 2008 for failure to conduct a test for the newly installed fire suppression system, the layout of on-site parking and the parking of cars on the sidewalk, and compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted (1) a letter from the Fire Department stating that it approved the installation of a fire suppression system at the site on February 19, 2008, (2) affidavits from the owner and operator stating that all on-site parking will be in accordance with the layout approved by the Board and that there will be no parking permitted on the sidewalk, and (3) a sign chart reflecting that the signage on the site complies with C1 district regulations; and

WHEREAS, the applicant also submitted photographs reflecting that, since the Board's last grant, new landscaping has been planted along the 57<sup>th</sup> Street side of the site and the fencing along the 56<sup>th</sup> Street side of the site has been replaced; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 16, 1946, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 13, 2006, to expire on July 13, 2016, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on January 10, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'September 26, 2011'-(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2016;

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

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THAT there shall be no parking of cars on the sidewalk and all on-site parking shall be in accordance with the BSA-approved plans;

THAT all signage on the site shall comply with C1 district regulations;

THAT the above conditions shall be reflected on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by January 10, 2013;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 420372340)

Adopted by the Board of Standards and Appeals January 10, 2012.

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## 593-69-BZ

APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.

SUBJECT – Application May 27, 2011 – Amendment (§11-413) to convert automotive repair bays to an accessory convenience store at an existing gasoline service station (*Shell*). C2-2/R5 zoning district.

PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108<sup>th</sup> and 109<sup>th</sup> Street. Block 9315, Lot 23, Borough of Queens.

## COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for an automotive service station with accessory uses, pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on August 16, 2011 after due notice by publication in *The City Record*, with a continued hearing on September 20, 2011, October 25, 2011 and December 6, 2011, and then to decision on January 10, 2012; and

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

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the site is located on a through lot bounded

by 108<sup>th</sup> Street to the west, Atlantic Avenue to the south, and 109<sup>th</sup> Street to the east, within a C2-2 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 1, 1949 when, under BSA Cal. No. 866-48-BZ, the Board granted a variance to permit the premises to be occupied by an automotive service station with accessory uses; and

WHEREAS, on February 10, 1970, under the subject calendar, the Board permitted the enlargement of the lot area and the reconstruction of the automotive service station with accessory uses, pursuant to ZR § 11-412; and

WHEREAS, subsequently, the grant was amended by the Board at various times; and

WHEREAS, most recently, on September 26, 1989, the Board granted an amendment to permit a change in the design of the accessory building and the canopy; and

WHEREAS, the applicant now seeks an amendment to permit the conversion of the accessory automotive repair bays on the site to an accessory convenience store; and

WHEREAS, at hearing, the Board directed the applicant to establish that the proposed accessory convenience store complies with Technical Policy and Procedure Notice (TPPN) # 10/99; and

WHEREAS, the Board notes that TPPN # 10/99 provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building; and (ii) the accessory convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant submitted plans reflecting that that the proposed convenience store will be located entirely within the enclosed building, and that it will provide a total of 2,010 sq. ft. of retail selling space, which is less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store meets the criteria set forth in TPPN # 10/99; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a change in use; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 10, 1970, so that as amended this portion of the resolution shall read: “to permit the conversion of the accessory automotive repair bays to an accessory convenience store pursuant to ZR § 11-413; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received December 15, 2011”–(4) sheets; and *on further condition*:

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other



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jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 420343300)

Adopted by the Board of Standards and Appeals January 10, 2012.

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## 271-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Plaza 400 Owners Corp., owner

SUBJECT – Application October 11, 2011 – Extension of Term for the continued use of transient parking in a residential apartment building which expired on July 6, 2011; waiver of the rules. R10/C1-5 zoning district.

PREMISES AFFECTED – 400 East 56<sup>th</sup> Street, corner of First Avenue, Block 1367, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Jordan Most.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a transient parking garage, which expired on July 6, 2011; and

WHEREAS, a public hearing was held on this application on December 6, 2011, after due notice by publication in *The City Record*, and then to decision on January 10, 2012; and

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

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

WHEREAS, the subject premises is located on the east side of First Avenue between East 55<sup>th</sup> Street and East 56<sup>th</sup> Street, partially within an R10 zoning district and partially within a C1-5 (R10) zoning district; and

WHEREAS, the site has approximately 200 feet of frontage on First Avenue, 232 feet of frontage on East 55<sup>th</sup> Street and East 56<sup>th</sup> Street, and a total lot area of approximately 46,795 sq. ft.; and

WHEREAS, the site is occupied by a 39-story residential building; and

WHEREAS, the cellar, sub-cellar and second sub-cellar are occupied as a 301-space accessory parking garage; and

WHEREAS, on July 6, 1971, under the subject calendar

number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law to permit a maximum of 95 surplus parking spaces to be used for transient parking, for a term of five years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on April 17, 2001, the Board granted a ten-year extension of term, which expired on July 6, 2011; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on July 6, 1971, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from July 6, 2011, to expire on July 6, 2021; *on condition:*

THAT this term shall expire on July 6, 2021;

THAT all residential leases shall indicate that the 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 above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT the layout of the parking lot shall be as approved by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 102804011)

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## 280-98-BZ

APPLICANT – Rampulla Associates Architects, LLP, for MARS Holding, LLC, owner.

SUBJECT – Application November 1, 2011– Extension of Time to obtain a Certificate of Occupancy for a Variance (§72-21) for the continued operation of a UG4 dental office which expired on June 15, 2011. R2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100’ north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Stephanie.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy, which expired on June 15, 2011; and

WHEREAS, a public hearing was held on this application on December 13, 2011 after due notice by publication in *The City Record*, and then to decision on January 10, 2012; and

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

WHEREAS, the site is located on the east side of Hylan Boulevard, 100 feet north of Isabella Avenue, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 2000 when, under the subject calendar number, the Board granted a variance to permit the extension of a dentist office use (identified as Use Group 6), formerly operated as a home occupation, into a portion of the building occupied by residential use, in what was then an R3-2 zoning district; the site was rezoned to R2 in 2005; and

WHEREAS, on June 15, 2010, the Board granted an amendment which permitted: (1) the elimination of the term; (2) the removal of the exterior access ramp and installation of an elevator to service the basement and first floor; (3) the modification of the parking layout; (4) the modification of the basement space to eliminate the garage, create a new patient waiting room, reception area and administrative office, and to relocate the employee lounge and redesign the existing bathroom; and (5) the redesign of the first floor to eliminate the waiting room, reception area and records room to be replaced by new patient rooms; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by June 15, 2011; and

WHEREAS, most recently, on May 9, 2011, the Board issued a letter acknowledging that the owner did not wish to implement the modifications to the site approved under the

June 15, 2010 amendment, and requesting that the Department of Buildings (“DOB”) issue a certificate of occupancy to the applicant based on the plans originally approved by the Board on February 8, 2000; and

WHEREAS, the applicant states that DOB subsequently issued an objection directing the owner to get approval from the Board because the time to obtain a certificate of occupancy has expired; and

WHEREAS, the applicant states that a new certificate of occupancy has not been obtained due to financing issues, and the applicant has not completed the construction approved in association with the prior amendment; and

WHEREAS, accordingly, the applicant requests a 16-month extension of time to obtain a certificate of occupancy; and

WHEREAS, based upon the above, the Board finds 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 *reopens*, and *amends* the resolution, dated February 8, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for 16 months from the date of this resolution, to expire on May 10, 2013; *on condition* that all use and operations shall substantially conform to plans approved by the Board under the original grant of February 8, 2000, marked “Received October 16, 1998”-(14) sheets and “July 8, 1999”-(1) sheet; and on further condition:

THAT a new certificate of occupancy shall be obtained by May 10, 2013;

THAT the owner shall not commence construction pursuant to the plans approved by the Board on June 15, 2010 (marked “Received May 25, 2010” - (6) sheets) without prior application to and approval from the Board;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 520027051)

Adopted by the Board of Standards and Appeals January 10, 2012.

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## 255-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Full Gospel New York Church, owner.

SUBJECT – Application August 12, 2011 – Amendment to a variance (§72-21) to permit a change of use on the 2nd and 3rd floors of the existing building at the premises from UG4

# MINUTES

house of worship to UG3 school. M1-1/M2-1 zoning district.

PREMISES AFFECTED – 130-30 31<sup>st</sup> Avenue, north side of 31<sup>st</sup> Avenue, between College Point Boulevard and Whitestone Expressway, block 4360, Lot 1, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Jordan Most.

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a house of worship (Use Group 4); and

WHEREAS, a public hearing was held on this application on December 6, 2011 after due notice by publication in *The City Record*, and then to decision on January 10, 2012; and

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

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

WHEREAS, this application was brought on behalf of Full Gospel New York Church (“Full Gospel Church”), a not-for-profit religious entity; and

WHEREAS, the site is located on the north side of 31<sup>st</sup> Avenue, between the Whitestone Expressway service road and College Point Boulevard, partially within an M1-1 zoning district and partially within an M2-1 zoning district; and

WHEREAS, the site has 348 feet of frontage on 31<sup>st</sup> Avenue, a depth of 600 feet, and a total lot area of 208,803 sq. ft.; and

WHEREAS, the subject site is occupied by a nine-story (including penthouse) mixed-use building with a house of worship (Use Group 4) at the cellar level, first floor, fourth floor and penthouse; a school (Use Group 3) at the second and third floors; and commercial offices (Use Group 6) at the fifth through eighth floors; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 4, 1998 when, under BSA Cal. No. 181-97-BZ, the Board granted a variance to permit the use of the cellar through fourth floor and penthouse of the existing building as a church, community center, and accessory offices; and

WHEREAS, on June 27, 2001, under the subject calendar number, the Board permitted the enlargement of the sanctuary, the construction of an accessory gymnasium, and modifications to the interior partitions; and

WHEREAS, subsequently, on May 23, 2002 and July 18, 2007, respectively, the Board issued letters of substantial compliance approving interior modifications at the site; and

WHEREAS, the applicant now seeks an amendment to legalize the conversion of the second and third floors of the subject building from a house of worship (Use Group 4) to a school (Use Group 3); and

WHEREAS, the applicant states that the school is operated as Promise Christian Academy, which was originally affiliated with Full Gospel Church; and

WHEREAS, the applicant states that the subject building is located on an extremely large zoning lot with the tower portion (where the school is located) being at least 70 feet from the nearest lot line; as a result, the surrounding commercial and storage uses do not have any adverse impacts on the proposed school use; and

WHEREAS, the applicant states that the school has a total of 154 students in pre-kindergarten through eighth grades, with 25 faculty and staff members; and

WHEREAS, the applicant further states that 80 percent of students arrive to the school by car and 20 percent arrive by shuttle vans; no students walk to the school; and

WHEREAS, as to faculty, the applicant states that 75 percent of the school’s faculty arrive by car and 25 percent arrive by public bus; and

WHEREAS, the applicant represents that the zoning lot, with an area of 208,803 sq. ft., has sufficient on-site space to accommodate all traffic generated by staff and students being dropped off/picked up from the school; and

WHEREAS, the applicant states that the subject site has 330 on-site parking spaces, with 131 reserved for the business office uses on the fifth through eighth floors, and 40 spaces along the front portion of the site dedicated exclusively for school use during the week; and

WHEREAS, accordingly, the applicant states that the school will not have any adverse traffic impacts on the surrounding street network; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 27, 2001, so that as amended this portion of the resolution shall read: “to permit the conversion of the second and third floors from a house of worship (Use Group 4) to a school (Use Group 3); *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 22, 2011”–(9) sheets; and *on further condition*:

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

# MINUTES

Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 400227642)

Adopted by the Board of Standards and Appeals January 10, 2012.

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## 302-01-BZ

APPLICANT – Deirdre A. Carson, Esq., for Creston Avenue Realty, LLC, owner.

SUBJECT – Application October 12, 2011 – Extension of Time to obtain a Certificate of Occupancy for a variance for the continued use of a parking facility accessory to commercial use which expired on April 23, 2033; waiver of the rules. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, between East 190<sup>th</sup> and 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

## COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Randell Minor.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, and an extension of time to obtain a certificate of occupancy, which expired on April 23, 2003; and

WHEREAS, a public hearing was held on this application on December 6, 2011 after due notice by publication in *The City Record*, and then to decision on January 10, 2012; and

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

WHEREAS, the site is located on the southwest corner of Creston Avenue and East 191<sup>st</sup> Street, partially within an R8 zoning district and partially within a C4-4 zoning district; and

WHEREAS, on December 7, 1948, under BSA Cal. No. 861-48-BZ, the Board granted a variance to permit the site to be used for the parking of more than five motor vehicles, for a term of two years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on January 10, 1988; and

WHEREAS, on April 23, 2002, under the subject calendar number, the Board reestablished the expired variance pursuant to ZR § 11-411, to permit an accessory parking facility for commercial use at the site, for a term of ten years; a condition of the grant was that a new certificate of occupancy be obtained by April 23, 2003; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained due to miscommunication between the owner and operator of the site; and

WHEREAS, the applicant now requests a six-month extension of time to obtain a certificate of occupancy; and

WHEREAS, based upon the above, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated April 23, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for six months from the date of this resolution, to expire on July 10, 2012; *on condition*:

THAT a new certificate of occupancy shall be obtained by July 10, 2012;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 200683590)

Adopted by the Board of Standards and Appeals January 10, 2012.

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## 529-52-BZ

APPLICANT – Alfonso Duarte, P.E., for Alacorn-Mordini Enterprises Inc., owner.

SUBJECT – Application June 7, 2011 – Extension of Term (§11-411) of a variance permitting automotive repair (UG 16B) with accessory uses which expired on May 9, 2011. C2-3/R6 zoning district.

PREMISES AFFECTED – 77-11 Roosevelt Avenue, north west corner Roosevelt Avenue & 78<sup>th</sup> Street. Block 1288, Lot 39. Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 10 A.M., for decision, hearing closed.

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## 118-53-BZ

APPLICANT – Issa Khorasanchi, for Henry R. Jenet,

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# MINUTES

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owner.

SUBJECT – Application October 24, 2011 – Extension of Term (§11-411) for continued operation of UG6 retail stores which expired on December 7, 2011. R4 zoning district.  
PREMISES AFFECTED – 106-57/61 160<sup>th</sup> Street, east side of 160<sup>th</sup> Street, 25' north of intersection of 107<sup>th</sup> Avenue and 160<sup>th</sup> Street, Block 10128, Lot 50, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Issc Khorasanchi.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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**295-57-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Aranoff Family Limited Partnership, owners.

SUBJECT – Application September 7, 2011 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expired on August 7, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2002. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, northwest corner of Union Turnpike and 147<sup>th</sup> Street, Block 6672, Lot 80, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Hiram Rothkrug.

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 10 A.M., for continued hearing.

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**321-63-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Verizon New York, Inc., owner; 1775 Grand Concourse LLC, lessee.

SUBJECT – Application October 13, 2011 – Amendment of a special permit (§73-65) which permitted the construction of an 8-story enlargement of a telephone exchange building.

The Amendment seeks to permit Use Groups 6A, 6B and 6C, pursuant to §122-10. R8/Special Grand Concourse Preservation District.

PREMISES AFFECTED – 1775 Grand Concourse, west side of the Grand Concourse at the southeast intersection of Walton Avenue and East 175<sup>th</sup> Street, Block 282, Lot 1001-1004, Borough of Bronx.

**COMMUNITY BOARD #5BX**

APPEARANCES –

For Applicant: Jay Segal.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 10 A.M., for decision, hearing closed.

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**737-65-BZ**

APPLICANT – Sheldon Lobel, P.C., for Yorkshire Towers Company Successor II, L.P., owner.

SUBJECT – Application November 3, 2011 – Extension of Term permitting the use of 50 surplus tenant parking spaces, within an accessory garage, for transient parking, pursuant to §60 (3) of the Multiple Dwelling Law, which expired on November 3, 2010; Waiver of the Rules. C2-8 (TA), C2-8 and R8B zoning district.

PREMISES AFFECTED – 301-329 East 86<sup>th</sup> Street, corner through lot fronting on East 86<sup>th</sup> Street, East 87<sup>th</sup> Street and Second Avenue. Block 1549, Lot 1. Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 10 A.M., for decision, hearing closed.

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**624-68-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Term of a Variance (§72-21) to permit wholesale plumbing supply (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07 Northern Boulevard, north side of Northern Boulevard between Utopia Parkway and 189<sup>th</sup> Street, Block 5364, Lots 1, 5, 7, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Hiram Rothkrug.

For Opposition: Henry Euler.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 352-69-BZ

APPLICANT – Sheldon Lobel, P.C., for Dr. Alan Burns, owner.

SUBJECT – Application September 29, 2011 – Extension of Term (§72-21) of a Variance for the continued operation of a UG16 animal hospital (*Brooklyn Veterinary Hospital*) which expired on September 30, 1999; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 411 Vanderbilt Avenue, east side of Vanderbilt Avenue between Greene and Gates Avenue, Block 1960, Lot 28, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 10 A.M., for continued hearing.

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## 188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 10 A.M., for decision, hearing closed.

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## 332-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Workmen’s Circle MultiCare Center, owner.

SUBJECT – Application September 20, 2011 – Amendment to a previously granted Variance (§72-21) for an enlargement to an existing nursing home (*Workmen's Circle MultiCare*). R5 zoning district.

PREMISES AFFECTED – 3155 Grace Avenue, entire block bounded by Burke, Grace, Hammersley and Ely Avenues, Block 4777, Lot 2, 57, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 10 A.M., for decision, hearing closed.

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## 156-03-BZ

APPLICANT – Goldman Harris LLC, for Northern RKO LLC, owner.

SUBJECT – Application November 30, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a 17-story mixed-use commercial/community facility/residential building which expires on January 12, 2012. R6/C2-2 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard. Block 4958, Lots 48, 38. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

For Opposition: Cheshire Frager, Y. Sunny Halm and Christian Kellberg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 61-11-A

APPLICANT – Fire Department of New York, for Mark Scharfman, owner; Multiple Dwelling, lessee.

SUBJECT – Application May 6, 2011 – Application seeking to modify Certificate of Occupancy to require an automatic sprinkler system for residents on upper floors of building.

PREMISES AFFECTED – 134 9<sup>th</sup> Avenue, West 18<sup>th</sup> and West 19<sup>th</sup> Street, Block 742, Lot 4, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for an automatic wet sprinkler system throughout all stairways and public hallways of the subject building; and

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# MINUTES

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WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

You are hereby directed and required to comply with the following order within (30) days.

Install an approved automatic wet sprinkler system throughout all stairways and public halls arranged and equipped as per the Building Code of the City of New York, Administrative Code Chapter 1, Section 28.101.1 and Title 28 Chapter 9, Section BC 903.

Authority: NYC Fire Code Chapter 9, Title 29, Section FC 901.4.3 of the Administrative Code, and Chapter 19 Sections 487 and 488 of the NYC Charter the building arranged and equipped as per Title 27, Chapter 1, and Subchapter 17 of the NYC Administrative Code.

Note: Plans shall be filed with and approved by the Department of Buildings before work commences; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in the *City Record*, and then to decision on January 10, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on the east side of Ninth Avenue, between West 18<sup>th</sup> Street and West 19<sup>th</sup> Street, within a C2-6A zoning district; and

WHEREAS, the subject site is occupied by a six-story residential building with retail use on the ground floor and accessory uses at the cellar; and

WHEREAS, the current Certificate of Occupancy Number 91134 (the "Current CO") reflects the use of the building as a Class A Multiple Dwelling with a Use Group 6 store on the ground floor; and

WHEREAS, the Current CO indicates that sprinklers are installed in the building; however, the Fire Department notes that while an automatic wet sprinkler system is installed throughout the ground floor retail use and in the cellar, there is no sprinkler system installed on any of the residential floors (floors two through six); and

WHEREAS, the Fire Department performed an inspection of the building on May 28, 2008 and submitted a Sprinkler System Recommendation Report for the subject site which explained the need for the proposed automatic wet sprinkler system throughout the stairways and public halls of the upper floors; and

WHEREAS, the Fire Department asserts that the proposed modification to the Current CO is necessary in the interest of public safety because fire protection within the subject building is deemed inadequate; and

WHEREAS, specifically, the Fire Department states that an automatic wet sprinkler system is required throughout the stairways and public halls for the following reasons: (1) the subject building is a residential building with more than four units with a single means of egress, as the backyard is inaccessible from the front of the building; (2) the tight

wraparound stairwell constrains access to the upper floors and interior fire attack with stretching fire lines; (3) the Fire Department cannot ladder the building from the ground floor because access is severely limited at the rear and front of the building due to setbacks located at the upper floors, isolated balconies, and a lack of parapets from adjacent buildings; and (4) because egress from the upper floors is constrained, there is substantial risk of injury to residents in case of fire; and

WHEREAS, pursuant to Fire Code § 901.4.3, the Fire Department requests to modify the certificate of occupancy to reflect that an automatic wet sprinkler system be installed in the stairways and public hallways of the upper floors of the building; and

WHEREAS, the owner testified at hearing and provided a letter, dated May 31, 2011, agreeing to install a sprinkler configuration, in consultation with DOB, which would satisfy the Fire Department's requirements; and

WHEREAS, based on the above, the Board agrees with the Fire Department that, given the use and construction of the building, its requirement for automatic sprinklers throughout all stairways and public hallways in the building is appropriate; and

WHEREAS, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, supports the Fire Department's goals to protect life and property at the premises in the event of fire; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the Fire Department initially requested, but it will be approved by DOB and the Fire Department prior to installation; and

WHEREAS, accordingly, the Board supports a modification to the certificate of occupancy to reflect that an automatic wet sprinkler system be maintained throughout all stairways and public halls in the subject building.

*Therefore it is Resolved* that the application of the Fire Commissioner, dated April 19, 2011, seeking the modification of Certificate of Occupancy No. 91134 is hereby granted.

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## 45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application July 20, 2011 – Extension of time to complete construction, which expired on July 10, 2011, in accordance with a previously approved common law vested rights application for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Hiram Rothkrug.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 10 A.M., for continued hearing.

# MINUTES

REGULAR MEETING  
TUESDAY AFTERNOON, JANUARY 10, 2012  
1:30 P.M.

8-11-A

APPLICANT – Beach Haven Group, LLC, for MTA/SBRW, lessee.

SUBJECT – Application January 26, 2011 – Proposed reconstruction of a tennis club located within the bed of a mapped street (Atwater Court and Colby Court), contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 2781 Shell Road, Atwater Court bounded by Shell Road and West 3<sup>rd</sup> Street, Colby Court bounded by Bokee Court and Atwater Court, Block 7232, Lot 1, 70, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 24, 2012, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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

**ZONING CALENDAR**

42-11-BZ

**CEQR #11-BSA-080Q**

APPLICANT – Eric Palatnik, P.C., for Winden LLC, owner.

SUBJECT – Application April 12, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility and for office uses. C4-2 zoning district.

PREMISES AFFECTED – 135-11 40<sup>th</sup> Road, between Prince and Main Streets, Block 5036, Lot 55, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 30, 2011, acting on Department of Buildings Application No. 420299910, reads in pertinent part:

Provided parking space contrary to ZR 36-21; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C4-2 zoning district, a reduction in the required number of accessory parking spaces for a mixed-use residential/office/community facility building from 99 to 69, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on December 6, 2011, after due notice by publication in The City Record, and then to decision on January 10, 2012; and

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

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

WHEREAS, the subject site is located on the north side of 40<sup>th</sup> Road, between Main Street and Prince Street, within a C4-2 zoning district; and

WHEREAS, the site has 95 feet of frontage on 40<sup>th</sup>



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Road, a depth of 100 feet, and a total lot area of 9,500 sq. ft.; and

WHEREAS, the site is occupied by a ten-story and mezzanine mixed-use residential/commercial/community facility building, with a total floor area of 43,301 sq. ft., and 84 accessory valet parking spaces located at the cellar, sub-cellar and second floor; and

WHEREAS, the applicant states that the subject building is currently occupied by the following uses: (1) 37 accessory valet parking spaces at the sub-cellar level; (2) retail space (Use Group 6) and 28 accessory valet parking spaces at the cellar level; (3) retail space (Use Group 6) and a residential lobby (Use Group 2) on the first floor; (4) 19 accessory valet parking spaces on the second floor; (5) office and retail space (Use Group 6) on the third floor; (6) ambulatory diagnostic treatment facility space (Use Group 4) and retail space (Use Group 6) on the fourth floor; (7) retail space (Use Group 6) on the fifth floor; and (8) residential space (Use Group 2) on floors six through ten; and

WHEREAS, the applicant represents that the required number of accessory off-street parking spaces for the current use of the subject building pursuant to ZR § 36-21 is 83; thus, the existing 84 accessory off-street parking spaces at the site comply with the parking requirements of the Zoning Resolution; and

WHEREAS, the applicant now proposes to: (1) reduce the number of accessory valet parking spaces at the second floor from 19 to four, and to convert the remainder of the second floor to office space (Use Group 6); (2) convert the existing retail space at the third, fourth and fifth floors to office space (Use Group 6); and (3) convert 735 sq. ft. of the first floor from lobby space servicing retail use to lobby space servicing office use (Use Group 6); and

WHEREAS, the applicant states that with the conversion of a portion of the retail space and a portion of the space designated for accessory parking to office space, the floor area of the building will increase from 43,301 sq. ft. to 45,078 sq. ft., and the parking requirement for the building will increase; and

WHEREAS, the applicant represents that the portions of the building proposed to be converted to office space are currently vacant; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C4-2 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for ambulatory diagnostic or treatment facilities and the noted Use Group 6 office use in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 36-21 the total number of required parking spaces for all uses at the site is 99; and

WHEREAS, the applicant represents that the proposed 69 parking spaces are sufficient to accommodate the parking demand generated by the use of the site; and

WHEREAS, the applicant notes that 7,548 sq. ft. of

floor space in the building is occupied by retail space and 18,922 sq. ft. of floor area in the building is occupied by residential space, which are not in parking category B1 and therefore the associated 32 required spaces have been excluded from the calculations for the requested reduction in parking; and

WHEREAS, the applicant states that the remaining approximately 20,108 sq. ft. of floor area at the site will be occupied either by ambulatory diagnostic or treatment facility space or professional offices, which are eligible for the parking reduction under ZR § 73-44; at a rate of one required parking space per 300 sq. ft. of floor area, 67 parking spaces are required for these uses; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 67; as noted, the special permit allows for a reduction from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area, which would reduce the required parking for these uses to 34 spaces; and

WHEREAS, as noted, an additional 32 parking spaces are required for the portions of the building occupied by retail and residential space, which are not eligible for the special permit; and

WHEREAS, thus, a total of 66 parking spaces are required for the uses on the site; and

WHEREAS, the applicant proposes to provide 69 accessory valet parking spaces on the subject site; and

WHEREAS, the applicant notes that the proposed total of 69 accessory parking spaces would provide three more spaces than the minimum of 66 required under the special permit; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the owner of the premises stating that the use of the second through fifth floors as Use Group 6 professional offices and ambulatory diagnostic and treatment facility space is contemplated in good faith; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response, the applicant submitted a trip generation and parking analysis, which reflects that there is a peak parking demand for only 35 parking spaces from all

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uses in the subject building combined; and

WHEREAS, the parking analysis provided by the applicant further reflects that, throughout the course of the day, there are between 35 and 241 available on-street parking spaces within the immediate vicinity of the site, in addition to three municipal parking facilities located within a one-quarter mile radius of the site; and

WHEREAS, based upon this study, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA080Q, dated April 12, 2011; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to permit, within a C4-2 zoning district, a reduction in the required number of accessory parking spaces for a mixed-use residential/commercial/community facility building from 99 to 69, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received April 12, 2011" – eleven (11) sheets, and on further condition:

THAT there shall be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of 69 parking spaces shall be

provided in the subject building;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## **67-11-BZ CEQR #11-BSA-097K**

APPLICANT – Sheldon Lobel, P.C., for Joseph Kleinman, owner.

SUBJECT – Application May 13, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141) side yard and (§23-47) rear yard. R-2 zoning district.

PREMISES AFFECTED – 1430 East 29<sup>th</sup> Street, West side of 29th Street between Avenue N and Kings Highway. Block 7682, Lot 60, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Nora Martins

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 28, 2011, acting on Department of Buildings Application No. 320273048, reads in pertinent part:

The proposed floor area ratio exceeds the permitted maximum floor area ratio and is contrary to ZR § 23-141(a).

The proposed open space ratio is less than the minimum required open space ratio and is contrary to ZR §23-141(a).

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The proposed rear yard is less than the required minimum rear yard and is contrary to ZR §23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in *The City Record*, with continued hearings on November 1, 2011 and November 22, 2011, and then to decision on January 10, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 29<sup>th</sup> Street, between Avenue N and Kings Highway, within an R2 zoning district; and

WHEREAS, the site consists of a double tax lot (Lot 60), with 65 feet of frontage on East 29<sup>th</sup> Street, a depth of 100 feet, and a lot area of 6,500 sq. ft.; and

WHEREAS, the site is currently occupied by two two-story single-family homes situated 13.3 feet apart from each other; 1430 East 29<sup>th</sup> Street is located on the north side of the lot, and 1432 East 29<sup>th</sup> Street is located on the south side of the lot; and

WHEREAS, the two single-family homes on the subject site have a total combined floor area of 3,002 sq. ft. (0.46 FAR); and

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

WHEREAS, the applicant proposes to enlarge the house located at 1432 East 29<sup>th</sup> Street and substantially demolish the house located at 1430 East 29<sup>th</sup> Street; and

WHEREAS, the applicant seeks an increase in the floor area from 3,002 sq. ft. (0.46 FAR) to 6,289 sq. ft. (0.97 FAR) across the entire site; the maximum permitted floor area is 3,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 49 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

WHEREAS, the applicant submitted an FAR table and map identifying 13 homes in the surrounding area that were enlarged pursuant to the special permit under ZR §73-622; and

WHEREAS, the applicant states that the 13 special

permit homes identified have FARs between 0.75 and 1.25, with 11 of the 13 homes having an FAR equal to or greater than the proposed 0.97; and

WHEREAS, the applicant notes that six of the 13 homes identified in the study are also double-wide, similar to the proposed home; and

WHEREAS, the applicant also submitted a residential FAR survey identifying 27 homes and apartment buildings in the immediate vicinity of the site with FARs greater than the proposed 0.97, including a multifamily building with an FAR of 2.36 and 84 residential units located at the southern end of the subject block; and

WHEREAS, at hearing, the Board raised concerns about the applicant's original proposal, which proposed a cellar extending beyond the footprint of the first floor, contrary to the Department of Buildings' ("DOB") position and the Board's decision pursuant to BSA Cal. No. 14-11-A, and which proposed to maintain the existing non-complying front yard with a depth of 11'-6" based on the location of the front wall of the home at 1430 East 29<sup>th</sup> Street, which is being substantially demolished; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the size of the cellar has been reduced in accordance with the Board's decision in BSA Cal. No. 14-11-A, and that the northern portion of the front yard (corresponding with the 1430 East 29<sup>th</sup> Street home) will provide a complying depth of 15'-0"; the southern portion of the front yard (corresponding with the 1432 East 29<sup>th</sup> Street home) will maintain the existing non-complying front yard depth of 11'-6"; and

WHEREAS, the Board also raised concerns about the attic floor height, the proposed home's compliance with the planting requirement of ZR § 23-451, and the amount of the existing homes being retained; and

WHEREAS, in response, the applicant submitted revised plans which reflect that the attic ceiling clearance height was reduced from 7'-11" to 7'-10" and the roof ridge was reduced by five inches, note that all open porches and landscaping requirements are subject to DOB approval, and clearly depict the portions of the existing home being retained; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

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

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N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 17, 2011”-(12) sheets and “December 27, 2011”-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 6,289 sq. ft. (0.97 FAR); a minimum open space ratio of 49 percent; a front yard with a minimum depth of 11’-6” at the southern portion of the site; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## 74-11-BZ

### CEQR #11-BSA-102R

APPLICANT – James Chin & Associates, LLC, for 1058 Forest Avenue Associates, owners.

SUBJECT – Application May 25, 2011 – Variance (§72-21) to allow the conversion of a community facility building for office use, contrary to use regulations. R3-2 & R-2 zoning district.

PREMISES AFFECTED – 1058 Forest Avenue, southeast intersection of Forest Avenue and Manor Road in West Brighton, Block 315, Lot 29, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: James Chin.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 13, 2011, acting on Department of Buildings Application No. 520065438, reads in pertinent part:

Uses in use Group 6B are not permitted as-of-right in a R3-2 and R2 district and are contrary to section 32-15 Zoning Resolution and therefore referred to Board of Standards and Appeals; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within an R3-2 zoning district and partially within an R2 zoning district, the change of use of an existing one-story building from school (Use Group 3) to office (Use Group 6B), which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on September 27, 2011 after due notice by publication in *The City Record*, with continued hearings on November 1, 2011 and December 6, 2011, and then to decision on January 10, 2012; and

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Forest Avenue and Manor Road, partially within an R3-2 zoning district and partially within an R2 zoning district; and

WHEREAS, the site has approximately 100 feet of frontage on Forest Avenue and 154 feet of frontage on Manor Road, with a total lot area of 15,400 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building currently occupied by a school (Use Group 3), with a floor area of 4,860 sq. ft. (0.32 FAR); and

WHEREAS, on July 25, 1961, under BSA Cal. No. 566-61-BZ, the Board granted a use variance to permit the construction of a one-story office building with accessory parking on the site; and

WHEREAS, the Board also granted a companion application on July 25, 1961, under BSA Cal. No. 567-61-A, to permit the installation of curb cuts on Forest Avenue and Manor Road located within the bed of a mapped street, contrary to General City Law Section 35; and

WHEREAS, on July 7, 2004, the Board issued a letter stating that it had no objection to the change of use of the site from office (Use Group 6) to school (Use Group 3), which is permitted as-of-right in the subject zoning districts; and

WHEREAS, the applicant now proposes to revert the use of the subject building to office use (Use Group 6); and

WHEREAS, the applicant states that although the original variance expired in 1981, the subject building was used continuously for office use from 1962 through 2004; and

WHEREAS, because the prior variance has expired and commercial use is not permitted in the subject zoning districts, the applicant seeks a use variance to permit the proposed Use Group 6 use; and

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WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site as a professional office building; (2) the obsolescence of the subject building for conforming use; and (3) the presence of two street widening easements and the need for two front yards on the site; and

WHEREAS, as to the history of use of the site, the applicant states that, pursuant to the Board's grant under BSA Cal. No. 566-61-BZ, the subject building was constructed specifically for office use in 1962; and

WHEREAS, the applicant submitted a certificate of occupancy dated August 15, 1962, reflecting that the building was occupied by office use at that time, and submitted a timeline reflecting that the building was continuously occupied by office use until 2004; and

WHEREAS, the applicant states that although the office use of the site was discontinued in 2004, the floor plan of the subject building remained the same; and

WHEREAS, the applicant further states that while the certificate of occupancy from 2005 lists the use of the site as a school (Use Group 3), the use has remained more akin to an office use; and

WHEREAS, specifically, the applicant states that the tenant that has occupied the site since 2004 is a not-for-profit organization that provides programs for people with autism, including individual consulting services for students; and

WHEREAS, the applicant states that although the use is classified as a school, the layout of the building remains consistent with a typical small office building, with a number of small offices which are well suited for the one-on-one counseling and teaching; and

WHEREAS, the applicant notes that the existing building is in good condition and was configured for commercial use, and that no significant changes are anticipated for the proposed office use; and

WHEREAS, the applicant represents that the current tenant, which is classified as a Use Group 3 school but operates more like a Use Group 6 office, is unique, and that the subject building is obsolete for a typical conforming use; and

WHEREAS, specifically, the applicant states that the subject building, which lacks a cellar or basement, is too small to accommodate the typical facilities classified in Use Groups 3 or 4; and

WHEREAS, the applicant further states that the existing 11 parking spaces would be insufficient to meet the demand created by staff and visitors of such facilities; and

WHEREAS, the applicant notes that the use of the site as a school or day care facility would also be hampered by the lack of a play area on the site, which is required to meet the educational standards established by the New York State Department of Education; and

WHEREAS, as to the presence of the street widening easements, the applicant states that there is a 21'-0" by 100'-0" street widening easement along the Forest Avenue frontage and a 6.27'-0" by 133'-0" street widening easement along the Manor Road frontage; and

WHEREAS, the applicant states that the street widening easements occupy a total of 2,934 sq. ft., or 19 percent of the site, and reduce the buildable area from 15,400 sq. ft. to 12,466 sq. ft.; and

WHEREAS, the applicant further states that, because the site is a corner lot, two front yards are required; a front yard with a depth of 10'-0" is required along Forest Avenue, and a front yard with a depth of 15'-0" is required along Manor Road; and

WHEREAS, the applicant states that an as-of-right development would be required to set the front yards back from the widening lines on both streets, further reducing the buildable area on the site and impeding the construction of a new conforming building on the site; and

WHEREAS, the Board is not persuaded by the assertions of obsolescence or that the street widening easements constitute unique conditions that create practical difficulty or unnecessary hardship; and

WHEREAS, however, based upon the above, the Board finds that the history of development of the site is a unique condition which creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a conforming scenario consisting of the existing one-story 4,860 sq. ft. building occupied by community facility (Use Group 3) use; (2) an alternative conforming scenario consisting of one detached single-family home and two semi-detached single-family homes; (3) an alternative conforming scenario consisting of a three-story 14,580 sq. ft. community facility building (Use Group 4); and (4) the subject one-story building occupied by office use (Use Group 6); and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant notes that, prior to 2004, the subject building was occupied by an office use continuously for more than 40 years; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that there is a two-story office building located immediately adjacent to the east of the site, and a two-story office building located directly across from the site, on Forest Avenue; and

WHEREAS, as to bulk, the applicant states that there are

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no changes proposed to the envelope of the subject one-story building, which has existed on the subject site for nearly 50 years, and that the floor area of 4,860 sq. ft. (0.32 FAR) is considerably below the maximum density for the subject zoning lot; and

WHEREAS, at hearing, the Board directed the applicant to reduce the proposed hours of operation for the office use, provide landscaping on the site, provide a garbage enclosure on the site, and comply with C1 district signage regulations; and

WHEREAS, in response, the applicant states that the hours of operation for the proposed office use will be Monday through Friday, from 9:00 a.m. to 7:00 p.m., and closed on weekends, and submitted revised plans reflecting that landscaping will be provided on the site, a garbage enclosure will be located at the southeast corner of the site, and that the signage will comply with C1 district regulations; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA102R dated September 2, 2011; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R3-2 zoning

district and partially within an R2 zoning district, the change of use of an existing one-story building from school (Use Group 3) to office (Use Group 6B), which does not conform to district use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 27, 2011" – six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 4,860 sq. ft. (0.32 FAR); and 11 accessory parking spaces, as indicated on the BSA-approved plans;

THAT signage on the site shall comply with C1 district regulations;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## **105-11-BZ CEQR #12-BSA-005K**

APPLICANT – Slater & Beckerman, LLP, for 147 Remsen Street Associates, LLC, owner; Team Wellness Corp., lessee.

SUBJECT – Application July 27, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Massage Spa Envu*). C5-2A (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 147 Remsen Street, north side of Remsen Street, between Clinton Street and Court Street, block 250, Lot 20, Borough of Brooklyn.

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

APPEARANCES –

For Applicant: Stefanie Marazzi.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 21, 2011, acting on Department of Buildings Application No. 320320620, reads in pertinent part:

Provide Board of Standards and Appeals (BSA)

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approval for the proposed physical culture establishment as per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-2A zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment (“PCE”) on the first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 6, 2011, after due notice by publication in *The City Record* and then to decision on January 10, 2012; and

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

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

WHEREAS, the subject site is located on the north side of Remsen Street, between Clinton Street and Court Street, in a C5-2A zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the subject site is occupied by a five-story mixed-use commercial/residential building; and

WHEREAS, the proposed PCE will occupy 4,355 sq. ft. of floor area, comprising the entire first floor of the building; and

WHEREAS, the PCE will be operated as Massage Envy Spa; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, from 9:00 a.m. to 10:00 p.m.; Saturdays, from 9:00 a.m. to 7:00 p.m.; and Sundays, from 10:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed masseurs and masseuses; and

WHEREAS, the applicant states that the Special Downtown Brooklyn District regulations do not restrict the use of the first floor of the subject building for the proposed PCE use; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA005K, dated July 12, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-2A zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment on the first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 26, 2011 - (1) sheet and “Received November 14, 2011 - (1) sheet and *on further condition*:

THAT the term of this grant shall expire on January 10, 2022;

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

THAT all massages shall be performed by New York State licensed massage therapists;

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

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

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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

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

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## 134-11-BZ

### CEQR #12-BSA-021M

APPLICANT – Eric Palatnik, P.C., for 335 Madison Avenue LLC, owner, Madison Spa Castle, Inc., lessee.

SUBJECT – Application September 7, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (*Spa Castle*). C5-3 zoning district.

PREMISES AFFECTED – 335 Madison Avenue, corner of Madison Avenue and East 43rd Street. Block 1278, Lot 20, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 10, 2011, acting on Department of Buildings Application No. 120764645, reads in pertinent part:

Proposed physical culture establishment is not permitted in a C5-3 zoning district and requires special permit by the Board of Standards and Appeals as per Zoning Resolution Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment (“PCE”) in the sub-cellar and portions of the cellar and the first floor of a 29-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in *The City Record*, with a continued hearing on December 13, 2011 and then to decision on January 10, 2012; and

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

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

WHEREAS, the subject site is located on the east side of Madison Avenue between 43<sup>rd</sup> Street and 44<sup>th</sup> Street, in a C5-3 zoning district within the Special Midtown District;

and

WHEREAS, the subject site is occupied by a 29-story commercial building; and

WHEREAS, on April 28, 1987, under BSA Cal. No. 977-86-BZ, the Board granted a special permit to permit the operation of a PCE at the cellar, sub-cellar, and first floor of the subject building; and

WHEREAS, the applicant notes that the term for the previously-approved PCE at the subject site expired in 2007 and the PCE is no longer in operation; and

WHEREAS, the applicant now proposes a PCE that will occupy 521 sq. ft. of floor area on the first floor of the building, with an additional 29,775 sq. ft. of floor space located at the cellar and sub-cellar; and

WHEREAS, the PCE will be operated as Spa Castle; and

WHEREAS, the proposed hours of operation for the PCE are 6:00 a.m. to 12:00 a.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed masseurs and masseuses; and

WHEREAS, the applicant states that the Special Midtown District regulations do not restrict the use of the sub-cellar, cellar or first floor of the subject building for the proposed PCE use; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA021M, dated September 7, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and



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Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment at the sub-cellar and portions of the cellar and first floor of a 29-story commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received November 7, 2011" - (5) sheets, and on further condition:

THAT the term of this grant shall expire on January 10, 2022;

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

THAT all massages shall be performed by New York State licensed massage therapists;

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

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

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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

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

Adopted by the Board of Standards and Appeals, January 10, 2012.

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## 54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Assemblyman William Colton, Council Member David G. Greenfield, Leo Weinberger, Lucille Franco and Lorraine Cardozo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 1:30 P.M., for decision, hearing closed.

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## 76-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.

SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/Ocean Parkway zoning district.

PREMISES AFFECTED – 2263 East 2<sup>nd</sup> Street, approximately 235' south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 1:30 P.M., for continued hearing.

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## 87-11-BZ

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

SUBJECT – Application June 21, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (23-141(b)). R3-1 zoning district.

PREMISES AFFECTED – 159 Exeter Street, between Hampton Street and Oriental Boulevard, Block 8737, Lot 26, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

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## 120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1) in a new commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29<sup>th</sup> Street, corner of 29<sup>th</sup> Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivien R. Krieger and James Heineman.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

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## 130-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Gutman and Arthur Gutman, owners.

SUBJECT – Application September 2, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3600 Bedford Avenue, between Avenue N and Avenue O, Block 7678, Lot 90, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to January 31, 2012, at 1:30 P.M., for continued hearing.

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## 137-11-BZ

APPLICANT – Slater & Beckerman, LLP, for 455 Carroll Street LLC, owner.

SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow the conversion of the second floor and second floor mezzanine from manufacturing and commercial uses to residential use, contrary to §42-10. M1-2 zoning district.

PREMISES AFFECTED – 455 Carroll Street, mid-block on the north side of Carroll Street between Nevins Street and Third Avenue, Block 447, Lot 47, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Stuart Beckerman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 1:30 P.M., for decision, hearing closed.

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## 166-11-BZ

APPLICANT – Ellen Hay/Wachtel & Masyr LLP, for Roc Le Triomphe Associates LLC, owners; Crunch LLC, lessee.

SUBJECT – Application October 24, 2011 – Special Permit (§73-36) to continue the operation of the Physical Culture Establishment (*Crunch Fitness*). C2-8 (TA) zoning district.

PREMISES AFFECTED – 1109 Second Avenue, aka 245 East 58<sup>th</sup> Street, west side of Second Avenue between East 58<sup>th</sup> and East 59<sup>th</sup> Streets, Block 1332, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen Hay.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION

This resolution adopted on July 26, 2011, under Calendar No. 37-11-BZ and printed in Volume 96, Bulletin No. 31, is hereby corrected to read as follows:

### 37-11-BZ

APPLICANT – Moshe M. Friedman, for Eli Bauer, owner.  
SUBJECT – Application April 4, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and (§23-48) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1337 East 26<sup>th</sup> Street, east side, 300' of Avenue M and East 26<sup>th</sup> Street, Block 7662, Lot 32, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

#### APPEARANCES –

For Applicant: Yosef Gottdiener.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2011, acting on Department of Buildings Application No. 320275910, reads in pertinent part:

“Proposed extension of an existing one family dwelling is contrary to:

ZR Sec 23-141 Floor Area Ratio

ZR Sec 23-141 Open Space Ratio

ZR Sec 23-47 Required Rear Yard

ZR Sec 23-46 & 23-48 Required Side Yard;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on June 21, 2011 after due notice by publication in *The City Record*, and then to decision on July 26, 2011; and

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

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

WHEREAS, the subject site is located on the east side of East 26<sup>th</sup> Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 2,111 sq. ft. (0.70 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,111 sq. ft. (0.70 FAR) to 2,940 sq. ft. (0.98 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 64 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 3’-2¼” (a minimum width of 5’-0” is required for each side yard) and the existing side yard along the northern lot line with a width of 6’-11¾”;

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 23’-4¼” (a minimum rear yard depth of 30’-0” is required); and

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

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received May 26, 2011”-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,940 sq. ft. (0.98 FAR); an open space ratio of 64 percent; a side yard with a minimum width of 3’-2¼” along the southern lot line; a side yard with a minimum width of 6’-11¾” along the northern lot line; and a rear yard with a minimum depth of 23’-4¼”;

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as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, July 26, 2011.

**\*The resolution has been revised to correct the DOB Application No. which read: “320214193” now reads: “320275910”, and to amend the clause, which read in part.: “2,929 sq. ft. (0.98 FAR)...” now reads: “2,940 sq. ft. (0.98 FAR)...”. Corrected in Bulletin Nos. 1-3, Vol. 97, dated January 18, 2012.**

## \*CORRECTION

This resolution adopted on September 13, 2011, under Calendar No. 68-11-BZ and printed in Volume 96, Bulletin Nos. 36-38, is hereby corrected to read as follows:

### 68-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rivkie Weingarten and Nachum Weingarten, owners.

SUBJECT – Application May 16, 2011 – Special Permit (§73-622) for enlargement of existing single family home, contrary to floor area, lot coverage and open space (§23-141); rear yard (§23-47) and side yard (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 1636 East 23<sup>rd</sup> Street, between Avenue P and Quentin Road, Block 6785, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 15, 2011, acting on Department of Buildings Application No. 320281510, reads in pertinent part:

“Proposed floor area is contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-141.

Proposed lot coverage is contrary to ZR 23-141.

Proposed rear yard is contrary to ZR 23-47.

Proposed side yard is contrary to ZR 23-461(a);”

and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

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

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

WHEREAS, the subject site is located on the west side of East 23<sup>rd</sup> Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of

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4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,660 sq. ft. (0.42 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,660 sq. ft. (0.42 FAR) to 3,987 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 50 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide lot coverage of 50 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4¼" (a minimum width of 5'-0" is required for each side yard) and to provide a side yard with a width of 5'-6½" along the northern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 25, 2011"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of

the building: a maximum floor area of 3,987 sq. ft. (1.0 FAR); an open space ratio of 50 percent; lot coverage of 50 percent; a side yard with a minimum width of 4¼" along the southern lot line; a side yard with a minimum width of 5'-6½" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, September 13, 2011.

**\*The resolution has been revised to correct the filing date and to amend the width clause, which read in part: ...4'-1¼"... now reads: ...4¼"... Corrected in Bulletin Nos. 1-3, Vol. 97, dated January 18, 2012.**

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## \*CORRECTION

This resolution adopted on December 13, 2011, under Calendar No. 82-11-BZ and printed in Volume 96, Bulletin No. 51, is hereby corrected to read as follows:

### 82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Ilyaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461); rear yard (§23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165’ south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2011, acting on Department of Buildings Application No. 3197918, reads:

ZR 23-141 – Proposed floor area exceeds permitted.

ZR 23-461 – Proposed side yard is less than required minimum.

ZR 23-47 – Proposed rear yard is less than required minimum; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards, and rear yard contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, with continued hearings on October 25, 2011 and November 22, 2011, and then to decision on December 13, 2011 and

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

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

WHEREAS, the subject site is located on the west side of Homecrest Avenue, south of Avenue T within an R5 zoning district; and

WHEREAS, the subject site has a lot area of 3,414 sq. ft. and is occupied by a single-family home with 1,761 sq. ft.

of floor area (0.52 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,761 sq. ft. (0.52 FAR) to 4,604 sq. ft. (1.35 FAR); the maximum permitted floor area is 4,268 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to provide one side yard with a width of 5’-0” and to maintain the pre-existing non-complying side yard with a width of 4’-5” (side yards with a total width of 13’-0” and a minimum width of 5’-0” each are required); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of 20’-0” (a rear yard with a minimum depth of 30’-0” is required); and

WHEREAS, the Board initially asked the applicant to provide a side yard with a width of 8’-0”, rather than 5’-0” so that the proposal could more closely comply with the requirement for a total width of 13’-0” for both side yards; and

WHEREAS, in response, the applicant asserted that the text of ZR § 73-622 permits the proposed side yards; and

WHEREAS, specifically, the relevant text at ZR § 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*; and

WHEREAS, the applicant asserts that its proposal to maintain one pre-existing non-complying side yard and to provide one complying side yard with a width of 5’-0” is consistent with the special permit text as it would not decrease the minimum width within the non-complying side yard; and

WHEREAS, further, the applicant considers the unique conditions of the subject site, which include a lot depth of 85 feet (opposed to the standard 100 feet) and adjacency to a non-complying multi-family building which does not provide a front yard, but does provide a side yard with a width of 10’-0” along the shared lot line; and

WHEREAS, the applicant also asserts that a side yard with a width of 5’-0” is consistent with the character of the neighborhood; and

WHEREAS, the Board considered the applicant’s request to provide a side yard with a width of 5’-0” as its complying yard and agrees that it is appropriate in the subject case; and

WHEREAS, the Board finds that it has jurisdiction, pursuant to ZR § 73-622 to approve the reduction of a complying side yard to a width of 5’-0”; and

WHEREAS, the Board notes that its conclusion is compatible with other side yard provisions in the Zoning Resolution such as ZR § 23-49 which allows property owners in certain residential zoning districts and under certain circumstances to build directly along one side lot line

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as long as a side yard with a width of at least 8'-0" is provided along the other side lot line, resulting in a failure to meet the total required width of 13'-0"; and

WHEREAS, generally, in consideration of the side yard requirements, including those set forth at ZR § 23-49, the Board finds a complying side yard with a width of 8'-0" to be the required complying side yard when the second side yard has a non-complying width less than 5'-0"; and

WHEREAS, however, the Board notes that a side yard with a width of 5'-0" is, on its own, a complying side yard condition; and

WHEREAS, the Board also notes that other side yard provisions, such as ZR § 23-49, already allow for the reduction of the side yard total to a width less than 13'-0"; and

WHEREAS, the Board notes that the reduction of the complying side yard from 8'-0" to 5'-0" may be warranted in certain cases and when there is compliance with all of the special permit findings; and

WHEREAS, the Board is persuaded that the site and surrounding conditions in the subject case are distinguishable from other cases with standard lot depths of 100 feet, which allow for a larger building footprint, and thus finds that the special permit findings, including that the proposal is compatible with the character of the neighborhood, are met; and

WHEREAS, in conclusion, the Board finds that when one side yard has a non-complying width of less than 5'-0", it would require that the second side yard have a width of at least 8'-0" except in certain instances when a second side yard with a width of less than 8'-0" but at least 5'-0" would be appropriate; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, side yards, and rear yard contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially

conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 13, 2011"- (9) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,604 sq. ft. (1.35 FAR); side yards with minimum widths of 4'-5" and 5'-0", and a rear yard with a minimum depth of 20'-0" as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, December 13, 2011.

**\*The resolution has been revised to correct the owner's name and to amend the clause, which read in part: ....4,484 sq. ft. (1.34 FAR)... now reads: ....4,604 sq. ft. (1.35 FAR)... Corrected in Bulletin Nos. 1-3, Vol. 97, dated January 18, 2012.**

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## \*CORRECTION

This resolution adopted on December 13, 2011, under Calendar No. 89-11-BZ and printed in Volume 96, Bulletin No. 51, is hereby corrected to read as follows:

### 89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23<sup>rd</sup> Street, Block 7301, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 25, 2011, acting on Department of Buildings Application No. 320269669, reads:

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

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, and 23-461; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, with continued hearings on November 22, 2011 and December 6, 2011, and then to decision on December 13, 2011 and

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

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

WHEREAS, the subject site is located on the southwest corner of Avenue S and East 23<sup>rd</sup> Street within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with 1,946 sq. ft. of floor area (0.65 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,946 sq. ft. (0.65 FAR) to 3,027 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain a perimeter wall with a height of 22'-0", which is a pre-existing non-compliance; and

WHEREAS, the applicant proposes to provide one side yard with a width of 20'-0" and to maintain the pre-existing non-complying side yard with a width of 1'-6"; and

WHEREAS, the Board raised concerns about whether the proposed height and setback comply with zoning district regulations and are confined to the permitted building envelope; and

WHEREAS, in response, the applicant provided axonometric drawings to confirm that the proposal (other than the pre-existing non-complying perimeter wall height) did not exceed the permitted building envelope; and

WHEREAS, the Board determined that the axonometric drawings were not conclusive and stated that DOB should confirm full compliance; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality



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Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 9, 2011”-(8) sheets and “November 30, 2011”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,027 sq. ft. (1.01 FAR); a lot coverage of 42 percent; an open space ratio of 58 percent; a maximum perimeter wall height of 22 feet; and side yards with widths of 20’-0” and 1’-6”, as illustrated on the BSA-approved plans;

THAT DOB shall review that the height and setback comply with all regulations related to the permitted building envelope;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, December 13, 2011.

**\*The resolution has been revised to correct the Plans Dates which read: “November 30, 2011”-(4) sheets” now reads: “November 30, 2011”-(2) sheets. Corrected in Bulletin Nos. 1-3, Vol. 97, dated January 18, 2012.**

## \*CORRECTION

This resolution adopted on December 13, 2011, under Calendar No. 152-11-BZ and printed in Volume 96, Bulletin No. 51, is hereby corrected to read as follows:

### 152-11-BZ

#### CEQR #12-BSA-026M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 240 East 38<sup>th</sup> Street Condominium on behalf of New York University, owner.

SUBJECT – Application September 19, 2011 – Variance (§72-21) to allow modifications to the existing plazas and arcades associated with the partial re-use of an existing building for a community facility (*NYU Langone Medical Center*), contrary to §37-625. C1-9 zoning district.

PREMISES AFFECTED – 240 East 38<sup>th</sup> Street, East 37<sup>th</sup> Street, Second Avenue, East 38<sup>th</sup> Street and Tunnel Exit Street, Block 918, Lot 1001-1026, Borough of Manhattan.

#### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 16, 2011, acting on Department of Buildings Application No. 120803746, reads, in pertinent part:

1. Certain changes to existing plazas are not in greater accordance with the standards set forth in ZR 37-70, and therefore certification by the Chair of the City Planning Commission cannot be obtained, contrary to the requirements of ZR 37-625.
2. Proposed passenger drop-off and a driveway are located within and within 10 feet of arcade, contrary to ZR 37-80.
3. Proposed planters and seating are located within arcades beneath a height of 12 feet, contrary to ZR 37-80; and

WHEREAS, this is an application under ZR § 72-21, by NYU Langone Medical Center to permit, on a site in a C1-9/C1-9 Transit Land Use District (TA) zoning district, the modification to existing plazas and arcades including the introduction of a driveway and other obstructions, contrary to ZR §§ 37-625 and 37-80; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in the *City Record*, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

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Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends approval of the application with the recommendation that the Medical Center post signage and paint curbs and the drop-off driveway to make it clear that there is no parking or standing and that the Medical Center employ a concierge to help direct vehicles; and

WHEREAS, this application is brought on behalf of the NYU Langone Medical Center (the "Medical Center"); and

WHEREAS, the site is located on a through lot with frontage on East 38<sup>th</sup> Street and East 37<sup>th</sup> Street, between Third Avenue and Second Avenue within a C1-9/C1-9 (TA) zoning district; and

WHEREAS, the site is part of a single zoning lot with the adjacent site at 221 East 37<sup>th</sup> Street (Block 918, Lot 14) (the "Zoning Lot"); and

WHEREAS, the adjacent site is owned by Verizon New York and is occupied with a nine-story building constructed in 1912 and subsequently enlarged pursuant to a bulk variance (BSA Cal. No. 304-38-BZ), because it exceeds floor area and height regulations; and

WHEREAS, the adjacent building is not proposed to be changed and is not part of the subject application except that it shares the subject Zoning Lot; and

WHEREAS, the Building has a plaza and arcade on East 37<sup>th</sup> Street (the "South Plaza" and "South Arcade") and a plaza and arcade on East 38<sup>th</sup> Street (the "North Plaza" and "North Arcade"); and

WHEREAS, NYU owns a condominium interest in the building (the "Building") for the benefit of the Medical Center, which will occupy 13 of the 24 non-mechanical floors of the Building for use as an Ambulatory Care Center; and

WHEREAS, Verizon owns a condominium interest in the Building and occupies the portions that are not occupied by the Medical Center; the current certificate of occupancy lists all floors above the first floor as offices and/or mechanical equipment (Use Group 6); and

WHEREAS, the Building was developed in the mid-1960s pursuant to the 1961 Zoning Resolution's plaza regulations, which allowed bonusable plazas with broad standards about dimensions and openness to the sky; arcades were subject to standards similar to those in effect today, including minimum dimensions and that they be open along their entire length; and

WHEREAS, pursuant to ZR § 37-625, design changes to existing plazas may be made only upon certification by the Chair of the City Planning Commission that such changes would result in a plaza that is in greater accordance with the public plaza standards set forth in ZR § 37-70; and

WHEREAS, the subject variance is required because some of the proposed design changes to the plazas, including the driveway, canopy, and baffle wall, would result in new non-compliances or increased degrees of non-compliance with the public plaza standards and therefore require a waiver of the ZR § 37-625 certification requirement and because the proposed driveway, planters, and movable seating do not comply with the arcade standards of ZR § 37-80 and also require waivers; and

WHEREAS, the Department of City Planning (DCP) has reviewed the changes and supports the plan submitted with this application as Drawings A-02.00 through A-026.00 and L-001.00 through L-520.00; and

WHEREAS, by letter dated September 14, 2001, DCP Counsel stated that a certification under ZR § 37-625 is unavailable for the proposed changes and that it would be appropriate to seek a variance from the Board to waive the requirement that the design changes must be in greater accordance with the public plaza standards and that a certification be obtained; and

WHEREAS, the applicant has acknowledged that the proposed passenger drop-off and driveway located within, and within ten feet of, the North Arcade is the Medical Center's primary need which triggers the remainder of the non-compliances (ZR § 37-80); and

WHEREAS, the applicant has identified the following specific non-compliances which necessitate the variance for the North Plaza: (1) the proposed driveway and passenger drop-off are not permitted obstructions (ZR § 37-726(d)); (2) the proposed canopy exceeds the area, projection, and height limitations for permitted obstructions (ZR § 37-726(c)); (3) more than 50 percent of the sidewalk frontage area is obstructed, and no portion of the unobstructed area has a width of at least eight feet (ZR § 37-721(a)); (4) the circulation paths at their narrowest points are five feet in width, less than the minimum eight feet required (ZR § 37-723); and (5) there are fewer than four trees (ZR § 37-742); and

WHEREAS, the applicant has identified the following specific non-compliances which necessitate the variance for the South Plaza: (1) the proposed baffle wall within the South Plaza is not a permitted obstruction and obstructs the visibility of the major portion of the plaza (ZR §§ 37-726 and 37-715); (2) less than 50 percent of the trees are planted flush at grade (ZR § 37-742); (3) the lawns at the west end exceed a height of six inches above the plaza surface (ZR § 37-742); and (4) permitted obstructions including planting beds and walls and expanded seating exceed 40 percent of the plaza area (ZR § 37-726(b)); and

WHEREAS, the Board agrees with DCP that this case, involving the modification of plaza and arcade conditions for a non-profit institution is a rare example of when a variance is an appropriate means of modifying a site under CPC's jurisdiction and there is limited applicability of such practice; and

WHEREAS, further, the Board notes that the proposed modifications are within the spirit of the plaza and arcade text; and

WHEREAS, the Medical Center proposes to occupy the building with its Ambulatory Care programs including the following: (1) the first floor and mezzanine will be occupied primarily by registration and pre-admission testing; (2) the 11<sup>th</sup> and 12<sup>th</sup> floors will be occupied by Dermatology; (3) the 13<sup>th</sup> floor will be occupied by Dialysis, Nephrology, and Hyperbaric services; (4) the 15<sup>th</sup> through 17<sup>th</sup> floors will be occupied by Rusk Home, a rehabilitation program; the 18<sup>th</sup> and 19<sup>th</sup> floors will be occupied primarily by the Cancer Center and Infusion; (5) the 20<sup>th</sup> floor will be occupied by Clinical Services; (6) the 22<sup>nd</sup> floor will be occupied by Clinical Labs;

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(7) the 23<sup>rd</sup> floor will be occupied by Endoscopy; and (8) the 2<sup>nd</sup> and 24<sup>th</sup> floors will be occupied by Infrastructure; and

WHEREAS, the applicant states that the following are the programmatic needs of the Medical Center: (1) to provide reasonable access to the building for Ambulatory Care Center patients who are visit the building for out-patient services but who may be frail and have mobility impairment; and (2) to enhance the open space environment for patients and the community; and

WHEREAS, the applicant states the following existing conditions limit the ability of the building to satisfy the Medical Center's programmatic needs: (1) the existing plazas and arcades designed nearly 50 years ago provide minimal amenities and landscaping; (2) both plazas have significant change in grade which impede access (the South Plaza is approximately four feet above the sidewalk, requiring a flight of stairs and a portion of the North Plaza is located 2'-6" below the sidewalk, requiring steps); (3) critical components of the Building's infrastructure and Verizon's facilities are located within the cellar, which precludes a re-grading of the South Plaza; (4) there is a distance of 56 feet between the North Plaza and the main entrance at East 38<sup>th</sup> Street; and (5) an existing exhaust vent faces the South Plaza and discharges large volumes of hot air from Verizon's generators, negatively affecting its habitability; and

WHEREAS, additionally, the applicant notes that there are unique vehicular traffic conditions adjacent to the site including that a portion of East 38<sup>th</sup> Street is a heavily used access route to the Queens-Midtown Tunnel ant that MTA buses use the lane in front of the buildings; and

WHEREAS, the applicant states that the noted physical constraints preclude the Medical Center from occupying the site in compliance with applicable zoning regulations in a way that would satisfy its primary programmatic needs of providing the Ambulatory Care Center's patients with appropriate and reasonable access to the building and enhancing the plazas and arcades to provide an improved environment for patients and community members; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant identifies the following insufficiencies of a design that is fully compliant with zoning regulations: (1) the requirement to climb stairs and travel a distance of 56 feet between the main entrance and the East 38<sup>th</sup> Street curb; (2) the use of the East 38<sup>th</sup> Street curb lane for patient drop-off/pick-up would exacerbate existing traffic congestion, increase waiting times, and conflict with MTA bus use; and (3) the existing minimal amenities and landscaping is barren and uninviting; and

WHEREAS, the applicant asserts that, in contrast, the proposal will improve the site conditions and allow it to accommodate the Medical Center's programmatic needs; and

WHEREAS, the applicant proposes the following improvements to the plazas and arcades: (1) the North Plaza will include a driveway and canopy to create a convenient all-weather drop-off/pick-up area providing frail, elderly, and/or mobility-impaired patients with appropriate access;

(2) an accessible pedestrian ramp in the North Plaza will provide access from the sidewalk to the entrance and an ADA-lift will be installed within the South Plaza to provide access; (3) varied landscaping and seating will be introduced to the plazas to create a more inviting environment for patients and community members, a landscape buffer will separate pedestrians from traffic; (4) the South Plaza will have broad seating terraces and benches and a shaded tree-lined area; (5) a green-screen baffle wall within the South Plaza will protect the adjacent plaza from hot air emitted by the building's exhaust vent, which would improve the environment for landscaping; (6) the plazas will include improved lighting, public information signage, and bicycle racks; (7) the plazas will be resurfaced; and (8) a trellis will be installed in the South Arcade to provide shade and planters and seating will be added; and

WHEREAS, the applicant states that the following conditions which create non-compliances or increase the degree of existing non-compliance are necessitated by the Medical Center's programmatic needs; and

WHEREAS, specifically, the applicant states that the proposed driveway, passenger drop-off, and canopy, which are not permitted plaza obstructions, are needed to provide the Ambulatory Care Center's frail and mobility-impaired patients with immediate, protected access to the building from ambulances and other vehicles; and

WHEREAS, the applicant states that the configuration of the driveway, though designed with the minimum dimensions necessary to accommodate patient vehicles, constrains circulation paths within the plaza to widths of approximately five feet (at least one circulation with a width of eight feet is required) and the presence of the driveway contributes to the obstruction of the plaza's sidewalk frontage, and it limits the width of the access areas along this frontage to less than eight feet (the sidewalk obstruction is required to be limited to 50 percent of the sidewalk frontage and at least one unobstructed portion is to have a width of at least eight feet); and

WHEREAS, the applicant states that other modifications are necessitated by the goal of providing an appropriate and welcoming entry and departure for patients and of improving the open space experience for the community; and

WHEREAS, towards those goals, the applicant proposes the following: (1) the North Plaza will be planted with low greenery instead of trees to allow maximum access to sunlight (the text requires trees within the plaza); (2) the baffle wall will block hot air emitted from generators (the text prohibits such obstructions and requires visibility of the major portion of the plaza); (3) less than 50 percent of the trees within the South Plaza will be planted flush at grade because of existing below-grade conditions and the lawns would exceed a height of six inches above the plaza to allow a planting berm for trees; (4) new seating and landscape features within the South Plaza, which along with existing permitted obstructions exceed 40 percent of the plaza area, will significantly improve the plaza environment; and (5) the planters and movable seating in the South Arcade will make the area more inviting (the text requires that an arcade be unobstructed to a height of 12 feet); and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the Medical Center's programmatic needs are legitimate, and agrees that the proposed modifications are necessary to address its needs, given the site's current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the current site, when considered in conjunction with the programmatic needs of the Medical Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the land uses surrounding the site are characterized by a mix of mid- and high-rise residential and mixed-use buildings, with commercial buildings to the north and medical and other institutional uses to the south and east; and

WHEREAS, the applicant asserts that the proposal will not alter the scale or envelope of the Building; and

WHEREAS, the applicant asserts that the proposal will enhance the open space to the benefit of the community by introducing landscaping, comfortable seating, and art to the plazas and arcades; and

WHEREAS, the applicant asserts that the design changes would transform the plazas and arcades from their current inaccessible and uninviting appearance to lush and diverse public spaces which are comfortable and aesthetically pleasing; and

WHEREAS, the applicant notes that the proposal has been reviewed by DCP to ensure that the plazas and arcades are as consistent as possible with the public policies served by the ZR's current design standards; and

WHEREAS, the applicant states that the proposed driveway within the North Plaza would reduce vehicular traffic congestion in the area around the Zoning Lot by replacing on-street patient drop-off/pick-up and reducing lane-changing maneuvers; and

WHEREAS, the applicant asserts that the driveway

will have little effect on pedestrians as pedestrian volumes on the block are relatively low for the area; and

WHEREAS, the applicant has agreed to employ a concierge to help direct vehicles and to keep the site well-lit; and

WHEREAS, the applicant asserts that the proposal will serve the goals of the 197-a Plan for the Eastern Section of Community District 6, including increasing the amount of useful public open space in the district; maintaining the character of the neighborhood while accommodating "specialized non-residential uses such as Bellevue/NYU Hospitals;" and

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

WHEREAS, the applicant states that the hardship was not self-created, and that no proposal that would meet the programmatic needs of the Medical Center could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, as to the minimum variance, the applicant states that it designed the driveway with the minimum dimensions necessary to satisfy the Medical Center's programmatic need for a patient drop-off area and that the curb cuts are of the minimum width to accommodate the turning radii of ambulances and other large medical transport vehicles, and the 22-ft. width of the internal driveway area is the minimum needed for two vehicle lanes – one for patient drop-offs/pick-ups and one for passing; and

WHEREAS, further, the applicant asserts that the dimensions of the canopy relate to those of the driveway and the existing arcade and were calculated to provide an adequate amount of weather protection for patients; and

WHEREAS, the applicant states that the other non-complying modifications to the plazas and arcades are the minimum necessary to enhance the open space environment for patients and community members within the design constraints created by the existing building; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the Medical Center to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA026M, dated September 15, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

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# MINUTES

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in a C1-9/C1-9 Transit Land Use District (TA) zoning district, the modification to existing plazas and arcades including the introduction of a driveway and other obstructions, contrary to ZR §§ 37-625 and 37-80, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received November 18, 2011”–eighteen (18) sheets; and *on further condition*:

THAT any change in control or ownership of the Medical Center’s condominium interest be reviewed and approved by the Board;

THAT the Medical Center will provide a full-time concierge who will help direct vehicles in the driveway;

THAT the above-noted conditions be noted on the certificate of occupancy;

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

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

THAT construction shall proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, December 13, 2011.

**\*The resolution has been revised to amend a whereas clause, which read in part: *WHEREAS, the applicant has agreed to comply...* and now reads: *WHEREAS, the applicant has agreed to employ a concierge to help direct vehicles and to keep the site well-lit; and* and to removed part of the 2<sup>nd</sup> condition. Corrected in Bulletin Nos. 1-3, Vol. 97, dated January 18, 2012.**

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# BULLETIN

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

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Volume 97, Nos. 4-5

February 2, 2012

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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Tuesday, January 24, 2012**

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141-66-BZ	338 East 9 <sup>th</sup> Street, Manhattan
248-75-BZ	1621 York Avenue, aka 436 East 86 <sup>th</sup> Street, Manhattan
188-78-BZ	8102 New Utrecht Avenue, Brooklyn
11-93-BZ	46-45 Kissena Boulevard, Queens
11-01-BZ	586/606 Conduit Boulevard, Brooklyn
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121-11-BZ	351 Convent Avenue, aka 420 West 145 <sup>th</sup> Street & 418 West 145 <sup>th</sup> Street, Manhattan
129-11-BZ	465 Carroll Street, Brooklyn
142-11-BZ	207 West 75 <sup>th</sup> Street, Manhattan
158-11-BZ	2166 Nostrand Avenue, Brooklyn
159-11-BZ	212-01 26 <sup>th</sup> Avenue, Queens

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# DOCKET

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New Case Filed Up to January 24, 2012

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## 4-12-BZ

432-440 Park Avenue, northwest corner of Park Avenue and East 56th Street., Block 1292, Lot(s) 33,43,45,46, Borough of **Manhattan, Community Board: 05**. Special Permit (§73-36) to permit the operation of a physical culture establishment. C5-3/C5-2.5 (MID) zoning district. C5-3/C5-2.5(MiD district).

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## 5-12-BZ

812 Dahill Road, northwest corner of Dahill Road and 19th Avenue, Block 5445, Lot(s) 39, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit an addition of a third floor to an existing residential building (two family) in an R5 district (Borough Park-optional provisions for certain R5 and R6 districts in Brooklyn) is contrary to ZR 23-146 © Front Yards, ZR 23-146 (d) Side Yards. R5-Boro Park district.

-----

## 6-12-BZ

39-06 52nd Street, Block 128, Lot(s) 39, 40, Borough of **Queens, Community Board: 02**. Variance (§72-21) to permit 3 family construction and attic to existing 3 family building. R-4 district.

-----

## 7-12-BZ

419 West 55th Street, between 9th and 10th Avenues., Block 1065, Lot(s) 21, Borough of **Manhattan, Community Board: 04**. This application is filed pursuant to Z.R.§73-36, as amended to request a special permit to allow the proposed physical culture establishment ("PCE") a spinning center in a C6-2/R8 zoning district. C6-2/R8 district.

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## 8-12-BZ

705 Gravesend Neck Road, north side of Gravesend Neck Road between 7th Street and East 8th Street., Block 7159, Lot(s) 39, Borough of **Brooklyn, Community Board: 15**. This application is filed pursuant to ZR§73-622, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential (R4) zoning district in the Special Ocean Parkway District. R4(OP) district.

-----

## 9-12-BZ

186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot(s) 278, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single family home and to vary ZR23-141 with respect to floor area ratio. R3-1 district.

-----

## 10-12-BZ

114-01 95th Avenue, northeast corner of 95th Avenue and 114th Street, Block 9400, Lot(s) 37, Borough of **Queens, Community Board: 9**. Application filed to permit legalization of an existing cellar and two story, two-family detached dwelling that does not provide two required front yards contrary to ZR§23-45, and does not provide a required side yard per ZR§23-461. R5 district.

-----

## 11-12-BZ

3599 Bedford Avenue, East side of Bedford Avenue between Avene N and Avenue O., Block 7679, Lot(s) 13, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to ZR§ 73-622, as amended, to request a special permit to allow the legalization of an enlargement to a single family residence located in a residential (R2) zoning district. R2 district.

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## 12-12-BZ

100 Varick Street, located on the east side of Varick Street, between Broome and Watts Streets, Block 477, Lot(s) 35 &42(tent.35), Borough of **Manhattan, Community Board: 02**. This application seeks variances of ZR Sections 42-10, 43-43 & 44-43 (pursuant to ZR Sections 72-01 & 72-01) to facilitate the construction of a new, 14-story residential building with ground floor retail in an M1-6 district.

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## 13-12-BZ

22-21 33rd Street, East side of 33rd, 200' south of corner formed by the intersection of Ditmars Boulevard and 33rd Street., Block 832, Lot(s) 22, Borough of **Queens, Community Board: 1**. New vertical and horizontal enlargement of 1-story on top of the existing building and 2 stories rear extension. Change the use from 2-family house to community facility as new place of Worship (Mosque). R5B district.

-----

## 15-12-A

29-01 Borden Avenue, bounded by Newton Creek, Borden Avenue, Hunters Point Avenue, 30th Street., Block 292, Lot(s) 1, Borough of **Queens, Community Board: 4**. Appeal from determination of Queens Borough Commissioner of the Department of Buildings (1) establishment of non-conforming accessory sign as before February 27, 2001 and (2) proof that discontinuance of accessory use in connection with a sign at the subject property did not occur for a period of two or more years. M3-1 Zoning district. M3-1 district.

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# DOCKET

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**16-12-BZ**

148 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue., Block 1753, Lot(s) 42, 53, Borough of **Brooklyn, Community Board: 3**. Special Permit pursuant to ZR§73-19 to allow for school to be located within a M1-2 zoning district, contrary to ZR§42-00. M1-2 zoning district. M1-2 district.

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**17-12-A**

409 Seabreeze Walk, north side of Seabreeze Walk, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Proposed building not fronting a mapped street contrary to Art 3 Sect. 36 GCL and Sect 27-291 Admin. Code of City of New York. The building is in the bed of a mapped street contrary to Art. 3 Sect 35 of the General City Law. Private disposal system in the bed of a mapped street contrary to D.O.B. policy. R4 zoning district. R4 district.

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**18-12-A**

377 Bayside Avenue, Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 15**. Proposed building and site not fronting a mapped street contrary to Art. 3 Sect. 36 GCL and Sect. C27-291 of Admin. Code. R4 Zoning District. R4 district.

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

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# CALENDAR

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**FEBRUARY 7, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 7, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **348-75-BZ**

APPLICANT – Eric Palatnik, P.C., for Moises A. Villa Delgado, owner.

SUBJECT – Application October 31, 2011 – Waiver of the Rules of Practice and Procedure and an extension of the term of the variance.

PREMISES AFFECTED – 1050 Forest Avenue, between Manor Road and Raymond Place, Block 315, Lot 39, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **135-01-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted a high speed auto laundry (Use Group 16B) which expired on October 30, 2011. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3" northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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### **148-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application June 23, 2011 – Amendment (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and less than the required rear yard (§23-47) and side yard (23-461) in an R3-2 zoning district.

PREMISES AFFECTED – 1559 East 29<sup>th</sup> Street, between Avenue P and Kings Highway, Block 7690, Lot 20, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**APPEALS CALENDAR**

### **149-11-A thru 151-11-A**

APPLICANT – Sheldon Lobel, P.C., for Eastern 7 Inc., owner.

SUBJECT – Application September 16, 2011 – Application filed pursuant to New York City Charter Sections 666.7 to vary the prohibition against construction within 30' of the street line of Eastern Parkway as set forth in Administrative Code Section 18-112 and cited in New York City Building Code Section 3201.3.1, to allow the construction of three 2-family homes at the premises. R6 zoning district.

PREMISES AFFECTED – 1789, 1793 & 1797 St. John's Place, northeast corner of intersection formed by St. John's Place and Eastern Parkway, Block 1471, Lot 65, 67, 68, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

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### **161-11-A**

APPLICANT – Quinn McCabe, LLP, for Britton Property, Inc., owner.

SUBJECT – Application October 14, 2011 – Appeal seeking to vacate a Stop Work Order and rescind revocation of building permits based on lack of adjacent property owner authorization. R7B Zoning District.

PREMISES AFFECTED – 82-20 Britton Avenue, east side of Britton Avenue between Broadway and Layton Street, Block 1517, Lot 3, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**FEBRUARY 7, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 7, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **104-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the Legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**177-11-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for St Anns ABH Owner LLC, owners.

SUBJECT – Application November 16, 2011 – Special Permit (§73-36) to permit physical culture establishment (*Blink Fitness*) within portions of an existing building in a C2-3(R7X) zoning district.

PREMISES AFFECTED – 601 East 156<sup>th</sup> Street, aka 800 St. Ann’s Avenue, north east corner of East 156<sup>th</sup> Street and St. Ann’s Avenue, Block 2618, Lot 7501, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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**188-11-BZ**

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LP, owner.

SUBJECT – Application December 9, 2011– Variance (§72-21) to allow for the conversion of floors 2-6 from commercial use to residential use, contrary to use regulations ZR 42-10. M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 24, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**18-09-BZ**

APPLICANT – Stuart A. Klein, for Ascot Properties Ltd., owner; Gold’s Gym, lessee.

SUBJECT – Application October 6, 2011 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Gold's Gym*) which expired on November 1, 2011. C6-5 zoning district. PREMISES AFFECTED – 250 West 54<sup>th</sup> Street, between Broadway and 8<sup>th</sup> Avenue, Block 1025, Lot 54, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Christopher Slowik

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on November 1, 2011; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, and then to decision on January 24, 2012; and

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

WHEREAS, the PCE is located on the south side of West 54<sup>th</sup> Street between Broadway and Eighth Avenue, in a C6-5 zoning district within the Theater Subdistrict of the Special Midtown District; and

WHEREAS, the PCE occupies a total of approximately 20,000 sq. ft. of floor area in portions of the first, second and third floor of a 12-story commercial building; and

WHEREAS, the PCE is operated as Gold’s Gym; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 28, 2009 when, under the subject calendar number, the Board granted a special permit to legalize a PCE in the subject building for a term of ten years from the date it began operating, to expire on November 1, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens and amends* the resolution, as adopted on July 28, 2009, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 1, 2011, to expire on November 1, 2021, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received October 6, 2011’-(5) sheets and ‘November 22, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2021;

THAT the above condition shall be listed on the certificate of occupancy;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 110405491)

Adopted by the Board of Standards and Appeals, January 24, 2012.

**141-66-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application June 29, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010; Amendment to enclose open parking area; and Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9<sup>th</sup> Street, Block 450, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Fredrick A. Becker and Michael Wesnick.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 10 A.M., for decision, hearing closed.

# MINUTES

## 248-75-BZ

APPLICANT – Alfonso Duarte, P.E., for 444 East 86<sup>th</sup> Street Owners Corp., owner; Quick Park, lessee.

SUBJECT – Application August 8, 2011 – Extension of Term permitting the use of a maximum of 50 transient parking spaces within an accessory garage granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law, which expired on October 14, 2010; Waiver of the Rules. R8B, R10 and C1-5 zoning districts.

PREMISES AFFECTED – 1621 York Avenue, aka 436 East 86<sup>th</sup> Street, west side of York Avenue, Block 1565, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 10 A.M., for decision, hearing closed.

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## 188-78-BZ

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Amendment (§11-413) to a previously granted Variance (§72-21) to add (UG16) automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81<sup>st</sup> Street, Block 6313, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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## 11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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## 11-01-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for P.J. Christy, Inc., owner.

SUBJECT – Application August 8, 2011 – Extension of Term for a gasoline service station (*BP British Petroleum*) which expired on August 7, 2011 and Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2006. C1-2/R5 zoning district.

PREMISES AFFECTED – 586/606 Conduit Boulevard, Pitkin Avenue and Autumn Avenue on the west, Block 4219, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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## 248-08-BZ

APPLICANT – New York City Board of Standards

OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

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

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

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for dismissal calendar.

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## 58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Quick Fitness, lessee.

SUBJECT – Application November 30, 2011 – Extension of Time to obtain a Certificate of Occupancy of a Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Quick Fitness*) which expired on August 3, 2011. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February

# MINUTES

14, 2012, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 8-11-A

APPLICANT – Beach Haven Group, LLC, for MTA/SBRW, lessee.

SUBJECT – Application January 26, 2011 – Proposed reconstruction of a tennis club located within the bed of a mapped street (Atwater Court and Colby Court), contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 2781 Shell Road, Atwater Court bounded by Shell Road and West 3<sup>rd</sup> Street, Colby Court bounded by Bokee Court and Atwater Court, Block 7232, Lot 1, 70, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 28, 2010, acting on Department of Buildings Application No. 320178874, reads in pertinent part:

“Proposed construction or development in the bed of final mapped street is contrary to Section 35 of the General City Law and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is a proposal for the upgrade and reconfiguration of a non-commercial tennis club (Use Group 4), consisting of the construction of 14 tennis courts covered by temporary dome structures rising to a maximum height of 40 feet, a one-story club house building, and approximately 26 accessory parking spaces, within the bed of two mapped streets, Atwater Court and Colby Court, within an R5 zoning district; and

WHEREAS, a public hearing was held on this application on January 10, 2012 after due notice by publication in the *City Record*, and then to decision on January 24, 2012; and

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

WHEREAS, by letter dated September 22, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 10, 2011, the Department of Transportation (“DOT”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, by letter dated February 8, 2011, the Department of Environmental Protection (“DEP”) states that: (1) there are no existing City sewers within the referenced location; (2) there is an existing eight-inch diameter City water main in mapped Colby Court between Shore Parkway and mapped Atwater Court and an existing eight-inch diameter City water main in mapped Atwater Court between West Third Street and mapped Colby Court; and (3) City Drainage Plan No. 1316B reflects for a future ten-inch diameter sanitary sewer and 12-inch diameter storm sewer to be installed in mapped Colby Court between Shore Parkway and mapped Atwater Court and for a future ten-inch diameter sanitary sewer and 12-inch diameter storm sewer in mapped Atwater Court between Shell Road and mapped Colby Court; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the width of the mapped portion of Colby Court between Bokee Court and Avenue Z and the width of the mapped portion of Atwater Court between Shell Road and mapped Colby Court; (2) the distance from the easterly lot line to the end cap of the eight-inch diameter City water main in mapped Atwater Court; (3) a 33-ft. wide sewer corridor in the bed of mapped Colby Court between mapped Bokee Court and mapped Atwater Court for the installation, maintenance and/or reconstruction of the future ten-inch diameter sanitary sewer, 12-inch diameter storm sewer and the existing eight-inch diameter City water main; and (4) a 32-ft. wide sewer corridor in the bed of mapped Atwater Court between Shell Road and mapped Colby Court for the installation, maintenance and/or reconstruction of the future ten-inch diameter sanitary sewer and 12-inch diameter storm sewer; and

WHEREAS, in response to DEP’s request, the applicant submitted a drawing to DEP which shows: (1) a 35-ft. wide sewer corridor in the mapped Colby Court between mapped Bokee Court and mapped Atwater Court; (2) a 35-ft. wide sewer corridor in the bed of mapped Atwater Court between mapped Shell Road and mapped Colby Court; (3) that new valves will be installed on the eight-inch diameter water main lines 18 inches from the curb line in the sidewalk area; and (4) that maintenance of the existing water main inside the property will be the responsibility of the owner; and

WHEREAS, by letter dated November 22, 2011, DEP states that it reviewed the revised drawing and that it has no further objections, provided a Deed Restriction Document stating that the parcels cannot be sold separately be recorded in the City Register and submitted to the Brooklyn Records office prior to the issuance of a connection permit; and

WHEREAS, in response, the applicant submitted a Deed Restriction Document recorded in the City Register, stating: (1) the applicant is responsible for the cost of the maintenance of the water mains located beneath Colby Court and Atwater Court; (2) DEP shall have access to the sewer corridor; and (3) the applicant cannot sell or otherwise transfer the parcels individually; and

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

*Therefore it is Resolved* that the decision of the Brooklyn

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Borough Commissioner, dated December 28, 2010, acting on Department of Buildings Application Nos. 320178874 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 10, 2012" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

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

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

Adopted by the Board of Standards and Appeals, January 24, 2012.

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## 170-11-A & 171-11-A

APPLICANT – Randy M. Mastro of Gibson, Dunn & Crutcher, LLP, for Win Restaurant Equipment and Supply Corporation, owner; Fuel Outdoor, LLC, lessee.

SUBJECT – Application October 28, 2011– Appeal seeking a common law vested right for a sign under the prior zoning regulations, which were amended on February 27, 2001. M1-5B

PREMISES AFFECTED – 318 Lafayette Street, north west corner of Houston and Lafayette Streets, Block 522, Lot 24, Borough of Manhattan.

### COMMUNITY BOARD #2M

#### APPEARANCES –

For Applicant: Trevis D. Lenkner.

**ACTION OF THE BOARD** – Appeal granted.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to maintain two advertising signs under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record* and then to decision on January 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-

Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on a through lot on the north side of Houston Street with frontage on Crosby Street and Lafayette Street; and

WHEREAS, the site is occupied by a five-story commercial building and the Houston Street and Lafayette Street facades are each occupied by one indirectly illuminated vinyl advertising sign (respectively, the "South Sign" and "East Sign"); and

WHEREAS, the applicant proposes to maintain the two advertising signs (the "Signs"); and

WHEREAS, the subject site is currently located and was at all relevant times located within an M1-5B zoning district; as of the June 29, 1999 Landmark Preservation Commission's (LPC) designation, the site is within the Noho Historic District; and

WHEREAS, the Signs comply with the former M1-5B zoning district parameters, specifically with respect to sign size, height, and illumination; and

WHEREAS, however, on February 27, 2001 (the "Enactment Date"), the City Council voted to adopt amendments to the Article IV, Chapter 2 of the Zoning Resolution to impose restrictions on height, size, and illumination of advertising signs in certain M1-5B zoning districts, including the subject zoning district; and

WHEREAS, accordingly, the Signs do not comply with current zoning regulations; and

WHEREAS, the applicant asserts that it maintained the Signs, pursuant to permits issued in 1999, until 2006 when the Department of Buildings (DOB) audited both applications, issued zoning and Code objections, and notified the applicant of its intent to revoke the permits; and

WHEREAS, following a series of meetings regarding the Signs and permits, on February 22, 2011, DOB issued final determinations that included the determination that both sign permits lapsed because work was not completed as of the Enactment Date; DOB also stated: "2/27/01, the effective date of the text amendment governing advertising signs, the construction authorized by the permit(s) was not completed because the sign[s] that w[ere] constructed . . . failed to conform to the approved plans"; and

WHEREAS, accordingly, the applicant filed two companion appeals, pursuant to BSA Cal. Nos. 29-11-A and 30-11-A, challenging DOB's determination that both sign permits lapsed on the Enactment Date in 2001; DOB asserted that the permits lapsed because the applicant failed to complete construction in accordance with the approved plans as required under ZR § 11-332; and

WHEREAS, the companion appeal applications are adjourned pending the outcome of the subject vesting applications, which the applicant filed for alternative relief; the applicant stated that it will withdraw the appeals if it succeeds in establishing the vesting criteria; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that on June 10, 1999,

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DOB issued permits for two indirectly illuminated signs at 318 Lafayette Street: Permit No. 101997706 (the "East Sign Permit") and Permit No. 101997699 (the "South Sign Permit") (together, the "Sign Permits"), authorizing the installation of two indirectly illuminated advertising signs pursuant to M1-5B sign regulations in effect at that time; and

WHEREAS, the plans associated with the South Sign Permit reflect a horizontal dimension of 60 feet, a vertical dimension of 70 feet, a surface area of 4,200 sq. ft., and indirect illumination; and

WHEREAS, the plans associated with the East Sign Permit reflect a horizontal dimension of 40 feet, a vertical dimension of 55 feet, a surface area of 2,200 sq. ft., and indirect illumination; and

WHEREAS, the Board notes that the DOB plans (form PW1) for the South Sign Permit were attached to the application for the East Sign Permit (and vice versa) and asked the applicant to explain the discrepancy; and

WHEREAS, in response, the applicant explained that it was an administrative error traced to the small cartographic legend on each permit application which has a directional arrow pointing to the incorrect building wall; and

WHEREAS, further, the applicant states that the Sign Permits and plans reflect the proper dimensions and wall designations with just the wrong directional arrow in the legend; and

WHEREAS, DOB determined that the Sign Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new sign regulations and the applicant did not affirmatively establish its vested rights between the Enactment Date and DOB's 2011 final determination on the matter; and

WHEREAS, however, by letter dated January 19, 2012, DOB states that the Sign Permits were lawfully issued, authorizing installation of the Signs prior to the Enactment Date; and

WHEREAS, DOB stated at hearing in the associated appeal applications that it would allow the approved sign plans to be corrected to reflect the as-built conditions through a post-approval amendment and that such a correction would not disturb its determination that the permits were lawfully issued and thus valid; and

WHEREAS, DOB and the applicant agree that the as-built Signs were installed contrary to plan, as discussed below in more detail; the applicant asserts and has provided evidence to support its assertion that the Signs' dimensions have remained the same since their installation; this has not been contested nor has the continuity status of the Signs since the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Sign Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior

zoning; and

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

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

WHEREAS, as to substantial construction, first the applicant notes that the construction of the South Sign varies from the approved plans in that the installed South Sign has a horizontal dimension of 76 feet (versus 60 feet reflected on the plans), a vertical dimension of 55 feet (versus 70 feet reflected on the plans), and a surface area of 4,180 sq. ft. (versus 4,200 sq. ft. reflected on the plans); the approved and as-built conditions both have a height of approximately 72'-8"; and

WHEREAS, the applicant notes that the construction of the East Sign varies from the approved plans in that the installed East Sign has a horizontal dimension of 46 feet (versus 40 feet reflected on the plans), a vertical dimension of 30 feet (versus 55 feet reflected on the plans), and a surface area of 1,380 sq. ft. (versus 2,200 sq. ft. reflected on the plans); the approved and as-built conditions both have a height of approximately 60 feet; and

WHEREAS, due to the fact that the approved and as-built conditions differ, for the purposes of the vesting analysis, the applicant identified the portions of the as-built signs and sign hardware and lighting fixtures which fit within the parameters of the approved signs; and

WHEREAS, accordingly, because of the variation, the applicant did not credit the entirety of the as-built signs towards its substantial construction analysis, but only the portions of the as-built signs which overlap with the approved signs and would have been a part of the signs if installed in full accordance with the approved plans; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner had completed the following work within the parameters of the approved South Sign: a sign area with a horizontal dimension of 60 feet, a vertical dimension of 55 feet, and a surface area of 3,300 sq. ft.; when compared against the South Sign reflected on the approved plans, the amount of work completed is 78.6 percent of the 4,200 sq. ft. sign; and

WHEREAS, additionally, the applicant states that it installed eight of the eight light fixtures (100 percent); and 27 of 50 required mounting clips (54 percent) required for



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# MINUTES

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the installation of the approved South Sign; and

WHEREAS, the applicant notes that it installed two additional lighting fixtures for the South Sign, but only credited the eight which would be required to illuminate the sign as reflected on the approved plans; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner had completed the following work within the parameters of the approved East Sign: a sign area with a horizontal dimension of 40 feet, a vertical dimension of 30 feet, and a surface area of 1,200 sq. ft.; when compared against the East Sign reflected on the approved plans, the amount of work completed is 54.5 percent of the 2,200 sq. ft. sign; and

WHEREAS, additionally, the applicant states that it installed six of the six light fixtures (100 percent); and 25 of 43 required mounting clips (58 percent) required for the installation of the approved East Sign; and

WHEREAS, the applicant states that it derived percentages by examining what portion of the current sign hardware falls within the dimensions of the signs if they had been constructed pursuant to permit specifications; and

WHEREAS, in support of the assertion that the Signs were installed after the permit issuance on June 10, 1999 and prior to the Enactment Date, the applicant submitted the following evidence: photographs taken by LPC prior to June 1999 (to establish the Signs were not yet in place prior to the permit issuance); a photograph taken in late 1999, which show that the Signs were installed; a photograph taken between February and May 2000 to show the Signs were installed; an aerial survey from June 20, 2000 to show that the Signs were installed; and a photograph from August 5, 2000 to show that the Signs were installed; and

WHEREAS, the applicant also submitted (1) an affidavit from an employee of the sign company who oversaw permitting, installation, and maintenance of signs from 1999 to 2006 asserting that the Signs were completed as seen and described and have been maintained accordingly; (2) a copy of 1998 DOB Bureau of Electrical Control permits to perform electrical work; and (3) communication from a sign installation company from 1997, which describes the installation of exterior electrical fixtures, consistent with what was installed to illuminate the Signs; and

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

WHEREAS, the Board concludes that the total amount of work completed when measured as a percentage of the total amount of work required to complete the approved signs achieves the level of substantial construction; and

WHEREAS, as to expenditure, the applicant states that the principal expenditures to construct the Signs are planning, hardware, and labor expenses; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$26,250 on materials and installation for the South Sign and \$18,500 on materials and

installation for the East Sign; and

WHEREAS, as proof of the expenditures, the applicant has submitted an affidavit from the sign company representative who oversaw the work attesting to the industry standards for such a project in 1999; and

WHEREAS, the applicant provided additional figures in its analysis including: (1) the amount of expenditures incurred for work within the permitted sign dimensions: \$19,817.90 for the South Sign and \$16,055.50 for the East Sign and (2) the total expenditures necessary to complete the approved signs: \$24,985 for the South Sign and \$20,055.46 for the East Sign; and

WHEREAS, the applicant concluded that the percentage of expenditures incurred relative to the total expenditures necessary to complete the approved signs are: \$19,817.90/\$24,985 or 79.3 percent for the South Sign and \$16,055.50/\$20,055.46 or 80.1 percent for the East Sign; and

WHEREAS, the Board considers the amount of expenditures significant when compared with the total required costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

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

WHEREAS, the applicant notes that the current zoning regulations and the LPC's jurisdiction not in effect at the time of the Sign Permits' issuance present considerable constraints; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former zoning, the Signs' surface area would decrease from the existing 4,180 sq. ft. for the South Sign and 1,380 sq. ft. for the East Sign to a maximum surface area of between 500-750 sq. ft., depending on whether they maintain their indirect illumination and other accessory signage at the site; but, in any event, the total surface area of indirectly illuminated advertising signage on the site may not exceed 1,418.75 sq. ft.; and

WHEREAS, in addition to the reduction in surface area, by zoning, the applicant asserts that LPC would only approve a painted sign of a maximum of 20 percent the size of the wall on the south wall and no sign would be permitted on the east wall due to the presence of windows; neither sign would be permitted to be indirectly illuminated as they are now; and

WHEREAS, in support of these assertions, the applicant submitted a letter dated October 7, 2005 from LPC, which details the restrictions it imposes on signs within historic districts; and

WHEREAS, by letter dated April 23, 2003 and

# MINUTES

introduced into the record for the companion appeal applications, LPC states that it accepts that the Signs were established prior to the historic district designation and, thus, LPC approval is not required; and

WHEREAS, all parties agree that if vesting is not established, the property owner would be subject to LPC approval; and

WHEREAS, in sum, the applicant asserts that a painted, non-illuminated sign with a surface area of 750 sq. ft. would be permitted on the south wall and no sign would be permitted on the east wall; and

WHEREAS, as to economic loss, the applicant states that it currently receives \$40,381.28 per month for the South Sign and \$8,500 per month for the East Sign for a monthly total of \$48,881.28; and

WHEREAS, the applicant estimates the rent under current regulations to be \$2,500 for the South Sign and \$0 for the East Sign for a monthly total of \$2,500; the applicant estimates that the monthly loss would be \$46,381.28 and that the monthly and annual percentage loss would be 95 percent; and

WHEREAS, the applicant included lease agreements to support its assertions as to the current income and an affidavit from the sign company to support the projections for the expected income for complying signs; and

WHEREAS, the Board agrees that the constraints on complying signs, coupled with the loss of income, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to maintain the Signs had accrued to the owner of the premises as of the Enactment Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit Nos. 101997706 and 101997699, as well as all related permits for various work types, either already issued or necessary to obtain final DOB approval, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, January 24, 2012.

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## 206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla and Max Gurvitch.

For Opposition: Carol Donovan and Richard Herb.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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## 118-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Jean Scanlon, lessee.

SUBJECT – Application August 18, 2011 – Proposed building not fronting a mapped street, contrary General City Law 36, and in the bed of a mapped street, contrary to General City Law 35, with a private disposal system in the bed of a mapped street contrary to Department of Buildings’ policy.

PREMISES AFFECTED – 811 Liberty Lane, Block 16350, Lot 300, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 7, 2012, at 10 A.M., for decision, hearing closed.

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## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: Jessica Napomiachi of Council Member Rosie Mendez Office and Andito Lloyd

For Administration: Mark Davis, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JANUARY 24, 2012  
1:30 P.M.**

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

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**ZONING CALENDAR**

**92-11-BZ**

**CEQR #11-BSA-111K**

APPLICANT – Sheldon Lobel, P.C., for Eugene and Margaret Loevinger, owners.

SUBJECT – Application June 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1349 East 26<sup>th</sup> Street, east side of East 26<sup>th</sup> Street, 390' south of Avenue M, Block 7662, Lot 28, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**APPEARANCES –**

For Applicant: Josh Rinesmith.

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

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 25, 2011, acting on Department of Buildings Application No. 320297059, reads in pertinent part:

Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.

Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%.

Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by

publication in *The City Record*, with a continued hearing on December 13, 2011, and then to decision on January 24, 2012; and

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

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

WHEREAS, the subject site is located on the east side of East 26<sup>th</sup> Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 1,863 sq. ft. (0.62 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,863 sq. ft. (0.62 FAR) to 2,994 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 3'-0", and to provide a side yard along the northern lot line with a width of 6'-8" (two side yards with a minimum width of 5'-0" each, and a total width of 13'-0", are required); and

WHEREAS, the applicant states that pursuant to ZR § 23-48, four inches may be subtracted from the minimum combined side yard regulations for every foot by which the lot width is less than the required minimum width of 40'-0"; therefore, since the subject lot has a width of 30'-0", the required total width of the side yards can be reduced by 3'-4" from 13'-0", to the proposed width of 9'-8"; and

WHEREAS, the Board notes that, as required by ZR § 23-48(b), the applicant submitted deeds and other evidence establishing that the subject zoning lot was owned separately and apart from all other adjoining tracts of land, both on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

WHEREAS, the applicant submitted a chart and an area map reflecting that there are at least seven homes within a 200-ft. radius of the site with an FAR of 1.0 or greater, including five homes located on the subject block; and

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

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WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 9, 2011"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,994 sq. ft. (1.0 FAR); a minimum open space ratio of 58 percent; a side yard with a minimum width of 3'-0" along the southern lot line; a side yard with a minimum width of 6'-8" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, January 24, 2012.

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## 106-11-BZ

### CEQR #12-BSA-006Q

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.

SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3/Long Island City zoning district.

PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Josh Rinesmith.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 12, 2011, acting on Department of Buildings Application No. 420348270, reads in pertinent part:

Proposed change of use to a physical culture establishment is contrary to ZR Section 32-10 and must be referred to the BSA for approval pursuant to ZR Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-5/R7-3 zoning district within the Queens Plaza Subdistrict of the Special Long Island City District, the operation of a physical culture establishment ("PCE") in a portion of the first floor of an eight-story mixed-use residential/commercial condominium building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with a continued hearing on December 13, 2011, and then to decision on January 24, 2012; and

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

WHEREAS, Community Board 2, Queens, states that it has no objection to this application; and

WHEREAS, the subject site is a triangular-shaped corner lot located between Thomson Avenue and Court Square in an M1-5/R7-3 zoning district within the Queens Plaza Subdistrict of the Special Long Island City District; and

WHEREAS, the site has 517 feet of frontage on Thomson Avenue, 376 feet of frontage on Court Square, and a total lot area of 76,785 sq. ft.; and

WHEREAS, the subject site is occupied by an eight-

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# MINUTES

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story mixed-use residential / commercial condominium building; and

WHEREAS, the proposed PCE will occupy 15,966 sq. ft. of floor area on a portion of the first floor; and

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

WHEREAS, the proposed PCE will be open 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that the Special Long Island City District and Queens Plaza Subdistrict regulations do not prohibit the use of the first floor of the subject building for the proposed PCE use; and

WHEREAS, at hearing, the Board directed the applicant to clarify the sound attenuation measures proposed for the PCE and confirm that the use will not adversely affect the residential apartments located above the PCE space; and

WHEREAS, in response, the applicant submitted revised plans and a report from a sound engineer stating that airborne and structureborne sound attenuation measures will be installed that meet or exceed the Noise Control Code limits, and which will reduce the noise transmission levels from the PCE to the residential apartments above to a level of 7 dBA above the ambient noise level during overnight hours; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA006Q, dated August 2, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows;

Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-5/R7-3 zoning district within the Queens Plaza Subdistrict of the Special Long Island City District, the operation of a physical culture establishment on a portion of the first floor of an eight-story mixed-use residential/commercial condominium building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 5, 2011" - (4) sheets, and *on further condition*:

THAT the term of this grant shall expire on January 24, 2022;

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

THAT all massages shall be performed by New York State licensed massage therapists;

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

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT sound attenuation measures shall be installed in the PCE as shown on the Board-approved plans;

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

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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

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

Adopted by the Board of Standards and Appeals, January 24, 2012.

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**128-11-BZ**

**CEQR #12-BSA-010K**

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 201 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23<sup>rd</sup> Street, west side of East 23<sup>rd</sup> Street, between Avenue R and Avenue S, Block 6828m Kit 31, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 8, 2011, acting on Department of Buildings Application No. 320325028, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, and then to decision on January 24, 2012; and

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

WHEREAS, Community Board 15, Brooklyn,

recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23<sup>rd</sup> Street, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,127 sq. ft. (0.53 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,127 sq. ft. (0.53 FAR) to 3,964 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-3 5/16", and to maintain the existing side yard along the southern lot line with a width of 8'-10 1/2" (two side yards with minimum widths of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition*

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that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 16, 2011"-(7) sheets and "January 11, 2012"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,964 sq. ft. (0.99 FAR); a minimum open space ratio of 61 percent; a maximum lot coverage of 42 percent; a side yard with a minimum width of 4'-3 5/16" along the northern lot line; a side yard with a minimum width of 8'-10 1/2" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, January 24, 2012.

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## 31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for deferred decision.

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## 21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for adjourned hearing.

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## 47-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*) with dormitories, contrary to use (§22-13), floor area (§§23-141 and 24-111), side setback (§24-551) and parking regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25<sup>th</sup> Street, west side of Bay 25<sup>th</sup> Street, between Bayswater Avenue and Healy Avenue. Block 15720, Lot 67, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman, David Shteierman and Joseph Hersh.

For Opposition: Council Member James Sanders, Jr., Enid Glabman, Eugene Falik, Phyllis Rudnick, Harvey Ridnick, Norman Silverman.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 1:30 P.M., for decision, hearing closed.

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## 66-11-BZ

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*) larger than 10,000 square feet, contrary to use regulations (§42-12). M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3<sup>rd</sup> Street, 3<sup>rd</sup> Avenue, 4<sup>th</sup> Street Basin and Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

APPEARANCES –

For Applicant: Jerry Johnson, Paul Curcid and Paul Bagle.

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For Opposition: Marlene Donnelly, Laura Senkevitch, Victoria Hagmon, Anita Durst, Jennifer Gardner, Naomi Seixas, Adam Kendall, Ellen Driscoll, Diane Buxbaum, Martin Bisi, Robert La Valva, Cassandra Weston, Gary Melot, Rebecca Davis, Roger Westerman, Rosemarie Padovano, N. Elbogen and Patrick Ferton.

Additional (neither for or against): Peter Pottier of Council Member Diana Reyna.

**THE VOTE TO CLOSE HEARING –**

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD –** Laid over to February 28, 2012, at 1:30 P.M., for decision, hearing closed.

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**73-11-BZ**

APPLICANT – Rampulla Associates Architects, for Tora Development, LLC, owners.

SUBJECT – Application May 26, 2011 – Variance (§72-21) to allow a three-story, 87-unit residential building, contrary to use regulations of (§32-11), height (§23-631) and parking (§25-23) regulations. C3A/SRD zoning district.

PREMISES AFFECTED – 70 Tennyson Drive, north side Tennyson Drive, between Nelson Avenue and Cleveland Avenue, Block 5212, Lot 70, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Philip Rampulla.

**ACTION OF THE BOARD –** Laid over to February 14, 2012, at 1:30 P.M., for deferred decision.

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**115-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Thomas Schick, owner.

SUBJECT – Application August 15, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1110 East 22<sup>nd</sup> Street, between Avenue J and Avenue K, Block 7603, Lot 62, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

**THE VOTE TO CLOSE HEARING –**

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD –** Laid over to February 14, 2012, at 1:30 P.M., for decision, hearing closed.

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**121-11-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Convent Avenue Baptist Church, owners.

SUBJECT – Application August 22, 2011 – Variance to legalize a two story and basement rear yard enlargement to a church (*Convent Avenue Baptist Church*), contrary to permitted rear yard regulations (§24-33), and lot coverage (§24-11). R7-2 zoning district.

PREMISES AFFECTED – 351 Convent Avenue, aka 420 West 145<sup>th</sup> Street and 418 West 145<sup>th</sup> Street, southeast corner of Convent Avenue and West 145<sup>th</sup> Street, Block 2050, Lot 42 & 47, Borough of Manhattan.

**COMMUNITY BOARD #9M**

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: William Nance.

**ACTION OF THE BOARD –** Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

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**129-11-BZ**

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3<sup>rd</sup> Avenue. Block 447, Lot 43. Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Jeffrey Chester.

For Opposition: Sebastian Giuliano.

**ACTION OF THE BOARD –** Laid over to February 28, 2012, at 1:30 P.M., for continued hearing.

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**142-11-BZ**

APPLICANT – Goldman Harris LLC, for The Phillippe at W75st NY, LLC, owner.

SUBJECT – Application September 9, 2011 – Variance (§72-21) to allow a new residential building, contrary to height and setback (§23-692), rear setback (§23-633), and lot coverage (§23-145) regulations. C4-6A zoning district.

PREMISES AFFECTED – 207 West 75<sup>th</sup> Street, north side of West 75<sup>th</sup> Street, between Broadway and Amsterdam Avenue, Block 1167, Lot 28, Borough of Manhattan.

**COMMUNITY BOARD #7M**

For Applicant: Caroline Harris and Robert Pauls.

For Opposition: Council Member Gale A. Brewer, Mark Diller of CB 7, Steven Basshov, Brian Cook, Pat Kiernan.

**ACTION OF THE BOARD –** Laid over to March 20, 2012, at 1:30 P.M., for continued hearing.

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## **158-11-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76' south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: William Nance.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

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## **159-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; JWSTKD II, lessee.

SUBJECT – Application October 21, 2011 – Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment (*Hi Performance Tai Kwon Do*). C4-1 zoning district.

PREMISES AFFECTED – 212-01 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue between Bell Boulevard and Corporal Kennedy Street, Block 5900, Lot 2, Borough of Queens.

### **COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

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Volume 97, No. 6

February 8, 2012

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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**14-12-A**

246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue., Block 13622, Lot(s) 7, Borough of **Queens, Community Board: 13**. Appeal from determination of Queens Borough Commissioner of the Department of Buildings regarding vested right to maintain existing advertising sign in residential district. R3X Zoning district. R3X district.

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**19-12-A**

38-30 28th Street, between 38th and 39th Avenues, Block 386, Lot(s) 27, Borough of **Queens, Community Board: 1**. Request for a determination that the Applicant has obtained a vested right under the common law to continue construction and obtain a Certificate of Occupancy. M1-2/R5B/LIC district.

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**20-12-BZ**

203 Berry Street, northeast corner of Berry and N. 3rd Streets., Block 2351, Lot(s) 1087, Borough of **Brooklyn, Community Board: 1**. The application is for a special permit to allow the installation of a physical culture establishment - occupying 3,690 square feet on the ground floor and 20,640 square feet on the sub-cellar in an under construction mixed residential/commercial building. M1-2/R6B district.

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**21-12-A**

55 Louise Lane, 362.52' west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot(s) 281, Borough of **Staten Island, Community Board: 2**. Appeal from decision of Borough Commissioner denying permission for proposed construction of a one family dwelling partially within the bed of a mapped street. R1-2(NA-1) district.

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

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# CALENDAR

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**FEBRUARY 14, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 14, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**764-56-BZ**

APPLICANT – Alfonso Duarte, P.E., for Anthony Panvini, owner.

SUBJECT – Application December 2, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses and the Sale of Use Cars (UG 16B) which expires on October 22, 2012. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, north side between Hollis Ct., Boulevard and 201<sup>st</sup> Street, Block 741, Lot 325,000.00, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**548-79-BZ**

APPLICANT – Bryan Cave LLP, for 249 West 29 Owners Corp.

SUBJECT – Application December 2, 2011 – Amendment of a previously approved Variance (§72-21) which permitted residential use (UG2) on floors 3 through 15. Application seeks to legalize residential use on the 2nd floor contrary to §42-481. M1-6D zoning district.

PREMISES AFFECTED – 247-251 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street, 170' east of 8<sup>th</sup> Avenue, Block 779, Lot 10, 12, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**8-10-BZ**

APPLICANT – NYC Board of Standards and Appeals  
Owner – Adel Kassim

SUBJECT – Application January 21, 2010 – Dismissal for Lack of Prosecution - Variance (§72-§21) to allow the legalization of an existing supermarket, contrary to use regulations, ZR §22-00. R4 zoning district.

PREMISES AFFECTED – 58-14 Beach Channel Drive, northeast corner of the intersection of Beach 59<sup>th</sup> Street and Beach Channel Drive, Block 16004, Lot 96, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**187-10-BZ**

APPLICANT – NYC Board of Standards and Appeals

OWNER – Ranjit S. Atwal

SUBJECT – Application October 5, 2010 – Dismissal for lack of Prosecution - Variance (§72-21) to permit the legalization of a three family building which does not comply with the side yard zoning requirements (ZR §23-462(c)). R6B zoning district.

PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**APPEALS CALENDAR**

**75-11-A & 119-11-A**

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid because the permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code. R4 Zoning District

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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**FEBRUARY 14, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 14, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**176-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Alla Lubimor, owner.

SUBJECT – Application November 14, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**184-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Esther Snyder and Robert Snyder, owner.

SUBJECT – Application December 5, 2011 – Special Permit §73-622 for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 945 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street between Avenue T and J, Block 7587, Lot 26, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 31, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**529-52-BZ**

APPLICANT – Alfonso Duarte, P.E., for Alacorn-Mordini Enterprises Inc., owner.

SUBJECT – Application June 7, 2011 – Extension of Term (§11-411) of a variance permitting automotive repair (UG 16B) with accessory uses which expired on May 9, 2011. C2-3/R6 zoning district.

PREMISES AFFECTED – 77-11 Roosevelt Avenue, north west corner Roosevelt Avenue & 78<sup>th</sup> Street. Block 1288, Lot 39. Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Alfonso Duarte.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted variance to permit the use of the lot for auto repair with accessory uses and the parking and storage of motor vehicles, which expired on May 9, 2011; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with continued hearings on November 22, 2011 and January 10, 2012, and then to decision on January 31, 2012; and

WHEREAS, Community Board 3, Queens, recommends approval of this application, with the following conditions: (1) that the application reflect the operation’s primary use as a parking lot; (2) the lighting on the 78<sup>th</sup> Street side of the site is upgraded; (3) the 78<sup>th</sup> Street and Roosevelt Avenue frontages are maintained free of debris and graffiti; (4) all perimeter sidewalk snow accumulation be removed in an expeditious manner; (5) the sidewalk fronting Roosevelt Avenue be repaired and the tar covered area be replaced with cement; (6) all outstanding Department of Buildings (“DOB”) violations be addressed; and (7) the grant be limited to a term of five years; and

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

Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northwest corner of Roosevelt Avenue and 78<sup>th</sup> Street, within a C2-3 (R6) zoning district; and

WHEREAS, the site is occupied by an automobile repair building with accessory uses and a parking lot for the parking and storage of motor vehicles; and

WHEREAS, on May 9, 1961, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station, lubritorium, non-automatic auto wash, office, sale of accessories, minor repairs with hand tools only, safety inspection station, parking, ground sign and parking and storage of motor vehicles, for a term of ten years; and

WHEREAS, the variance was subsequently amended and extended at various times; and

WHEREAS, most recently, on June 17, 2003, the Board granted a ten-year extension of term, and an amendment to permit a change in use to auto repair with lubritorium, non-automatic car wash, office, sale of accessories, minor repairs with hand tools only, safety inspection station, parking, ground sign and parking and storage of motor vehicles, which expired on May 9, 2011; and

WHEREAS, the applicant now requests an additional ten-year term; and

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

WHEREAS, at hearing, the Board directed the applicant to provide landscaping and remove the debris from the rear of the building; and

WHEREAS, in response, the applicant submitted revised plans and photographs reflecting that shrubs have been planted along the northern lot line and the debris has been removed from the rear of the building; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted an affidavit from the owner stating that the sidewalk fronting Roosevelt Avenue will be repaired and the tar covered area will be replaced with cement, any debris and graffiti that accumulates will be removed from the site, and any snow that accumulates will be removed from the sidewalks; and

WHEREAS, the applicant states that the DOB violations will be resolved prior to obtaining a new certificate of occupancy; and

WHEREAS, the applicant further states that the 78<sup>th</sup> Street side of the site has sufficient lighting directed to the interior of the lot, and submitted photographs reflecting the lighting provided on the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on May 9, 1961, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from May 9, 2011, to expire on May 9, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application

# MINUTES

marked 'Received June 7, 2011'-(2) sheets and 'December 13, 2011'-(1) sheet; and *on further condition:*

THAT this term shall expire on May 9, 2021;

THAT the sidewalk fronting Roosevelt Avenue shall be repaired and the tar covered area shall be replaced with cement prior to the issuance of a certificate of occupancy;

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

THAT any graffiti located on the site shall be removed within 48 hours;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by January 31, 2013;

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

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

(DOB Application No. 401457286)

Adopted by the Board of Standards and Appeals, January 31, 2012.

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## 321-63-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Verizon New York, Inc., owner; 1775 Grand Concourse LLC, lessee.

SUBJECT – Application October 13, 2011 – Amendment of a special permit (§73-65) which permitted the construction of an 8-story enlargement of a telephone exchange building.

The Amendment seeks to permit Use Groups 6A, 6B and 6C, pursuant to §122-10. R8/Special Grand Concourse Preservation District.

PREMISES AFFECTED – 1775 Grand Concourse, west side of the Grand Concourse at the southeast intersection of Walton Avenue and East 175<sup>th</sup> Street, Block 282, Lot 1001-1004, Borough of Bronx.

## COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Jay Segal.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for the construction of a Use Group 6D telephone exchange building; and

WHEREAS, a public hearing was held on this application on December 6, 2011 after due notice by

publication in *The City Record*, with a continued hearing on January 10, 2012, and then to decision on January 31, 2012; and

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

WHEREAS, Community Board 5, Bronx, recommends approval of this application with the certain conditions, including: (1) all signage comply with ZR § 122-20; (2) the main entrance, lobby, elevators and revolving doors respect the historical design of the building; (3) retail establishments not operate on a 24 hour basis; and (4) all Grand Concourse retail store deliveries be in compliance with Department of Transportation regulations to avoid traffic congestion and unnecessary double parking on the Grand Concourse; and

WHEREAS, the site is bounded by the Grand Concourse to the east, East 175<sup>th</sup> Street to the north, and Walton Avenue to the west, in an R8 zoning district within the Special Grand Concourse Preservation District; and

WHEREAS, the site has approximately 201 feet of frontage on the Grand Concourse, 265 feet of frontage on East 175<sup>th</sup> Street, 190 feet of frontage on Walton Avenue, and a total lot area of 44,288 sq. ft.; and

WHEREAS, the applicant notes that the building is situated such that it contains street level frontage on portions of its first story (on Walton Avenue and East 175<sup>th</sup> Street) and on a portion of its fourth story (on the Grand Concourse); thus, the building has five stories at or above the level of the Grand Concourse and three stories below the level of the Grand Concourse; and

WHEREAS, the subject site is occupied by an eight-story building with the following uses listed on the certificate of occupancy: Use Group 6D telephone exchange at the first, second, third, fifth and sixth floors, Use Group 4 hospital-related office facilities for the Bronx Lebanon Hospital Center (“Bronx Lebanon”) at the fourth floor, and Use Group 6 offices for the New York City Human Resources Administration (“HRA”) at the seventh and eighth floors; and

WHEREAS, the applicant states that the building is currently vacant except for the continued use of the Use Group 6D telephone exchange use on the second and third floors, and portions of the cellar and first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1926 when, under BSA Cal. No. 358-26-BZ, the Board granted a variance to permit the construction of a telephone exchange building on the subject site, which at the time was split-zoned between a business district and a residence district; and

WHEREAS, on June 11, 1963, under the subject calendar number, the Board granted a special permit under ZR § 73-65, to permit the construction of an eight-story enlargement to the existing building, which extended the footprint of the building from approximately 50 percent of the zoning lot to approximately 85 percent of the zoning lot; and

WHEREAS, on March 17, 1987, the Board granted an amendment to permit the fourth story of the building to be



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used as Use Group 4 hospital related office facilities only for Bronx Lebanon; and

WHEREAS, most recently, on January 6, 1988, the Board granted an amendment to permit the seventh and eighth stories of the building to be used for Use Group 6 offices only for HRA; and

WHEREAS, the applicant now seeks an amendment to permit the following uses: (1) boiler room, storage and telephone exchange equipment at the cellar; (2) an attended accessory group parking facility for 100 cars and open accessory parking for up to ten vehicles, a loading berth and ten to 18 bicycle spaces at the first floor; (3) telephone exchange use at the second and third floors; (4) retail, office and/or limited community facility use at the fourth floor; and (5) office and/or limited community facility use at the fifth through eighth floors; and

WHEREAS, the applicant represents that, if not for the existence of the subject special permit, all of the proposed use changes would be allowed as-of-right under the Zoning Resolution; and

WHEREAS, specifically, the applicant states that ZR § 52-34 would allow the conversion of any portion of the building to the proposed limited community facility use as a conforming use in the R8 district, and ZR § 122-10(c) would allow the portions of the building used for Use Group 6D telephone exchange uses on or before July 1, 1981, which constituted the entire building, to be converted to offices; and

WHEREAS, the applicant further states that the fourth story could be converted to retail use as-of-right because its location at street level on the Grand Concourse qualifies it as a “ground floor” pursuant to ZR § 122-10(c); and

WHEREAS, by letter dated December 5, 2011, the Department of City Planning confirms that the term “ground floor” in ZR § 122-10(c) is interpreted in the subject case to include the frontage along the Grand Concourse; and

WHEREAS, subject to a private agreement with the landlord, the applicant states that the community facility uses within the building will be limited to the following uses without sleeping accommodations: (1) colleges or universities, including professional schools but excluding business college or trade schools; (2) museums or non-commercial art galleries but not libraries; (3) schools; (4) ambulatory diagnostic or treatment health care facilities, limited to public, private, for-profit or not-for-profit medical, health and mental health care facilities licensed by the State of New York, or a facility in which patients are diagnosed or treated by health care professionals, licensed by the State of New York or by persons under the supervision of such licensee for medical, health or mental health conditions, and where such patients are ambulatory rather than admitted (such facilities shall not include the practice of veterinary medicine, physical culture or health establishments, ophthalmic dispensing, abortion clinics or drug treatment facilities); (5) non-profit or voluntary hospitals and related facilities without overnight admission, but not animal hospitals; (6) philanthropic or non-profit

institutions without sleeping accommodations; and (7) welfare centers; and

WHEREAS, the applicant represents that allowing the vacant portions of the building to be occupied by general offices or limited community facility uses would facilitate the re-tenanting of these spaces; and

WHEREAS, the applicant notes that the fourth, seventh, and eighth floors were previously permitted to be occupied by office use pursuant to amendments granted by the Board, but that the restriction of the space to particular tenants (Bronx Lebanon and HRA, respectively) resulted in the current vacancy of these spaces; and

WHEREAS, the applicant states that, even though no requirement for accessory off-street parking is triggered by the proposed use changes, the number of new parking spaces proposed (100 in addition to up to ten existing spaces within the open area south of the building) is consistent with general parking principles in the Zoning Resolution; and

WHEREAS, the applicant agreed to comply with the above-mentioned conditions stipulated by the Community Board; and

WHEREAS, at hearing, the Board raised concerns about whether the proposal reflected a sufficient number of loading berths, whether the anticipated number of truck deliveries to the retail space on the site would be compatible with traffic patterns, the operation of the proposed garage, and whether the signage complies with the underlying district regulations; and

WHEREAS, in response, the applicant states that if the subject site were located in a commercial district, two loading berths would be required for the building, but one loading berth is sufficient for the subject building because: (1) the ground floor will not generate a need for loading, as it will be used as a parking garage; (2) the second and third floors will continue to be used as a telephone exchange, which will have a dedicated entrance on Walton Avenue (adjacent to the remaining loading berth) through which most loading requirements will be handled; (3) the fourth floor retail loading will be from the Grand Concourse level (during non-business hours only) instead of from the loading berth, as it will be easier to perform loading activities for the retail spaces directly from the Grand Concourse level rather than from the loading berth at the rear of the building several floors below the retail spaces; and (4) floors five through eight, which are proposed for office use and collectively contain approximately 145,000 sq. ft., will only generate a requirement for one loading berth; and

WHEREAS, the Board raised questions about the effect loading would have on the operation of the bike lane on Grand Concourse; and

WHEREAS, in response, the applicant states that it will put a provision in the lease requiring loading for the retail space to occur only at night, when there is minimal bicycle traffic; and

WHEREAS, as to the anticipated number of truck deliveries to the retail space, the applicant submitted a letter from the owner stating that similar size stores in comparable

# MINUTES

locations estimate six deliveries a day by parcel size trucks to restock the space; and

WHEREAS, as to the operation of the garage, the applicant states that it is proposing an accessory garage with spaces available to tenants and their invitees; and

WHEREAS, as to signage, the applicant states that all signs will comply with the Special Grand Concourse Preservation District regulations, pursuant to ZR § 122-20; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 11, 1963, so that as amended this portion of the resolution shall read: “to permit the proposed modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received October 13, 2011’–(13) sheets and ‘November 22, 2011’–(3) sheets; and *on further condition*:

THAT all signage shall comply with the Special Grand Concourse Preservation District regulations, pursuant to ZR § 122-20;

THAT any retail uses on the site shall not operate on a 24-hour basis;

THAT vehicle loading will be limited to the hours of 7:00 p.m. through 7:00 a.m. and such condition will be reflected on all retail leases;

THAT the community facility uses within the building shall not include sleeping accommodations and shall be limited to the uses indicated on the BSA-approved plans;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 220143146)

Adopted by the Board of Standards and Appeals January 31, 2012.

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## 188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north

side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell Ross.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a gasoline service station (Use Group 16) with accessory convenience store, which expired on January 6, 2008; and

WHEREAS, a public hearing was held on this application on July 12, 2011, after due notice by publication in *The City Record*, with continued hearings on September 27, 2011, November 15, 2011, December 13, 2011 and January 10, 2012, and then to decision on January 31, 2012; and

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

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

WHEREAS, the site occupies the entirety of Block 5743, bounded by 169<sup>th</sup> Street to the west, 18<sup>th</sup> Avenue to the north, Utopia Parkway to the east, and 20<sup>th</sup> Avenue to the south, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site is a triangular-shaped lot located on the corner of Underhill Avenue and Soundview Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1955 when, under BSA Cal. No. 38-42-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubritorium, non-automatic auto wash, storage and sales of accessories, and office, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration in October 1990; and

WHEREAS, on January 6, 1998, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station and to convert the accessory repair bays and auto washing area to an accessory convenience store, for a term of ten years, which expired on January 6, 2008; and

WHEREAS, the applicant now seeks an additional extension of the term; and

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

WHEREAS, at hearing, the Board directed the applicant to restore the concrete ramp at the entrance to the convenience store, remove excess signage from the site, and clarify the number of vacuum stations on the site; and

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WHEREAS, in response, the applicant submitted photographs reflecting that the concrete ramp has been refurbished at the entrance to the convenience store and excess signage has been removed, submitted a signage analysis reflecting that the site complies with C1 district signage regulations, and submitted revised plans reflecting that there are two vacuum stations on the site, one located at the southwest corner of the accessory convenience store and one located on the south side of the Underhill Avenue frontage; and

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

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated January 6, 1998, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from January 6, 2008, to expire on January 6, 2018; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received January 10, 2011'-(1) sheet and 'January 18, 2012'-(1) sheet; and on further condition:

THAT the term of this grant shall expire on January 6, 2018;

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

THAT all signage on the site shall comply with C1 district regulations;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 220056392 )

Adopted by the Board of Standards and Appeals, January 31, 2012.

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## 332-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Workmen’s Circle MultiCare Center, owner.

SUBJECT – Application September 20, 2011 – Amendment to a previously granted Variance (§72-21) for an enlargement to an existing nursing home (*Workmen’s Circle MultiCare*). R5 zoning district.

PREMISES AFFECTED – 3155 Grace Avenue, entire block bounded by Burke, Grace, Hammersley and Ely Avenues, Block 4777, Lot 2, 57, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Jordan Most.

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

## THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a seven-story nursing home building (Use Group 3); and

WHEREAS, a public hearing was held on this application on November 22, 2011 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2012, and then to decision on January 31, 2012; and

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

WHEREAS, this application is submitted on behalf of the Workman’s Circle Home and Infirmary (“Workman’s”), a non-profit entity; and

WHEREAS, the subject site occupies the entire block bounded by Burke Avenue on the north, Grace Avenue on the east, Hammersley Avenue on the south and Ely Avenue on the west, within an R5 zoning district; and

WHEREAS the site has a total lot area of 108,956 sq. ft. and is currently occupied by a seven-story, 524-bed nursing home building (Use Group 3) with a floor area of 232,657 sq. ft. (2.14 FAR); and

WHEREAS, on July 24, 1959, under BSA Cal. No. 270-59-BZ, the Board granted a variance to permit the construction of a six-story nursing home which exceeded the maximum permitted height; and

WHEREAS, on April 13, 1999, under the subject calendar number, the Board granted a variance to permit the proposed enlargement of the existing nursing home building (Use Group 3), which did not comply with zoning regulations related to front yard, height and setback, and floor area; and

WHEREAS, most recently, on March 17, 2009, the Board granted a one-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that construction was completed within the extended time period and a final certificate of occupancy has been obtained; and

WHEREAS, the applicant now requests an amendment to enlarge a small portion of the building to develop an accessory dialysis facility available to the patients of the existing nursing home building as well as to outside patients with dialysis needs; and

WHEREAS, specifically, the applicant proposes to create the accessory dialysis facility by: (1) reallocating underutilized floor area in the existing building that is currently designated for administrative services use; and (2) in-filling the building’s 1,825 sq. ft. southernmost court, which is adjacent to the aforementioned administrative services space; and

WHEREAS, the applicant notes that, in addition to the Board’s grant, the Workman’s building is also subject to a special permit granted by the City Planning Commission (“CPC”); and

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WHEREAS, the applicant states that, along with the subject application, it is concurrently seeking approval to modify the prior special permit granted by the CPC to reflect the requested bulk modification to the building; and

WHEREAS, the applicant states that the minor enlargement represents an increase in floor area from 232,657 sq. ft. (2.14 FAR) to 234,482 sq. ft. (2.15 FAR), or a 0.68 percent increase in floor area; and

WHEREAS, the applicant further states that no other bulk non-compliances are created or increased by the proposed enlargement; and

WHEREAS, the applicant states that the proposed in-fill of the court will not be visible from the street; and

WHEREAS, the applicant states that the proposed dialysis facility will have approximately 18 treatment rooms and is expected to operate on a dual shift basis, treating patients from 6:00 a.m. to 2:00 p.m., and then from 2:00 p.m. to 7:00 p.m.; and

WHEREAS, at hearing, the Board questioned whether there was sufficient parking to accommodate the proposed dialysis facility; and

WHEREAS, in response, the applicant submitted a parking survey which reflects that, of the 120 parking spaces located on the perimeter of the subject block, 35 spaces were available at the time of the survey; and

WHEREAS, the applicant states that there are also 32 on-site parking spaces at the site, located in two parking areas; the parking area located at the intersection of Ely and Burke Avenues can accommodate 24 vehicles and is generally used by employees, and the parking area located mid-block adjacent to the main entrance toward the southern end of Ely Avenue can accommodate eight vehicles and is generally available for visitor parking; and

WHEREAS, the applicant represents that the proposed dialysis facility is expected to generate very little parking demand, as nearly all patients are expected to arrive by ambulette or companion; therefore, the on-site parking combined with the approximately 30 percent of on-street parking spaces available on a typical weekday will be sufficient to accommodate the patients who require parking; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 13, 1999, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received September 20, 2012”–(4) sheets; and *on further condition*:

THAT prior to the issuance of a building permit, the applicant shall obtain approval for the proposed modification from the City Planning Commission;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 220137377)

Adopted by the Board of Standards and Appeals, January 31, 2012.

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## 156-03-BZ

APPLICANT – Goldman Harris LLC, for Northern RKO LLC, owner.

SUBJECT – Application November 30, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a 17-story mixed-use commercial/community facility/residential building which expires on January 12, 2012. R6/C2-2 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard. Block 4958, Lots 48, 38. Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within a C2-2 (R6) zoning district, the construction of a 16-story mixed-use commercial/community facility/residential building, which expired on January 12, 2012; and

WHEREAS, a public hearing was held on this application on January 10, 2012 after due notice by publication in *The City Record*, and then to decision on January 31, 2012; and

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

WHEREAS, certain members of the community provided testimony raising concerns about the application, including the security and protection of the landmarked property, and whether the appropriate approvals were secured from the Federal Aviation Administration (“FAA”); and

WHEREAS, the subject site is located on the north side of Northern Boulevard, between Prince Street and Farrington Street, within a C2-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 13, 2005 when, under the subject calendar number, the Board granted a variance to permit the

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proposed development of a 200-unit, 17-story mixed-use commercial/community facility/residential building, with ground level retail, second floor community facility space, and 229 accessory parking spaces in a three-level below-grade parking garage; and

WHEREAS, on May 29, 2007, the Board issued a letter of substantial compliance permitting the following changes to the proposal: (1) the elimination of one floor, reducing the building to 16 stories with an average floor to ceiling height of 10'-2" instead of 9'-4"; (2) the expansion of the footprint of floors seven through 16 to redistribute the floor area from the floor that has been eliminated; (3) the modification of the size of certain units; and (4) the redesign of the inner courts; and

WHEREAS, on January 12, 2010, the Board granted an extension of time to complete construction for a term of two years, to expire on January 12, 2012; and

WHEREAS, most recently, on July 12, 2011, the Board granted an amendment to permit the following modifications to the previously-approved plans: (1) an increase in the number of dwelling units from 200 to 357; (2) a reduction in the average unit size from 1,437 sq. ft. to 787 sq. ft.; (3) an increase in the number of accessory parking spaces from 229 to 385; (4) a 6,503 sq. ft. reduction in the residential floor area (from 287,313 sq. ft. to 280,810 sq. ft.) and a corresponding 6,503 sq. ft. increase in the commercial floor area (from 10,957 sq. ft. to 17,460 sq. ft.) through the addition of a retail mezzanine between the first and second floors; (5) the relocation of the community facility space from the second floor to the third floor; (6) a reduction in the depth of the rear yard from 31'-5" to 30'-0"; and (7) a reduction in the initial setback distance from 20'-0" to 15'-0"; and

WHEREAS, substantial construction was to be completed by January 12, 2012, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to funding delays, additional time is necessary to complete the project; thus, the applicant now requests a four year extension of time to enable the owner to secure financing and complete construction; and

WHEREAS, the applicant submitted a letter from the Landmarks Preservation Commission dated June 24, 2011, stating that the Certificate of Appropriateness issued for the building has been extended to June 12, 2014, and that the amended Certificate of Appropriateness reflects the changes requested and subsequently approved by the Board on July 12, 2011; and

WHEREAS, the applicant notes that the prior FAA Determination of No Hazard to Air Navigation expired in 2008, and submitted an updated FAA Determination of No Hazard to Air Navigation, approving the proposed building on December 13, 2011; and

WHEREAS, in response to the concerns raised at hearing about the security of the site, the applicant submitted photographs reflecting that a fence has been installed around the perimeter of the building; and

WHEREAS, based upon its review of the record, the

Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 13, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on January 31, 2016; *on condition:*

THAT substantial construction shall be completed by January 31, 2016;

THAT FAA approval must be in effect at the time DOB issues a building permit;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 401622669)

Adopted by the Board of Standards and Appeals, January 31, 2012.

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## **295-57-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Aranoff Family Limited Partnership, owners.

SUBJECT – Application September 7, 2011 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expired on August 7, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2002. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, northwest corner of Union Turnpike and 147<sup>th</sup> Street, Block 6672, Lot 80, Borough of Queens.

## **COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Hiram Rothkrug.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for decision, hearing closed.

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## **611-76-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Capitol One Bank, owner.

SUBJECT – Application November 15, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an off-site accessory parking facility for a bank (*Capital*

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One) which expires on February 15, 2012. R4 zoning district.

PREMISES AFFECTED – 43-17/21 214<sup>th</sup> Place, east side 161.24’ north of Northern Boulevard, Block 6301, Lot 9, 10, 11, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for decision, hearing closed.

## 540-86-BZ

APPLICANT – Slater & Beckerman, LLP, for 148 Jamaica Avenue Co., LLC, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of a Special Permit (§73-42) for the continued operation of a one story UG6 commercial building (*Key Food*); an Amendment to eliminate the restriction on hours of operation. C4-2A/R6B zoning district.

PREMISES AFFECTED – 32-11/32-21 Newton Avenue, northwest corner of Newton Avenue and 33<sup>rd</sup> Street, Block 619, Lot 1, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stefanic Marczzi and Thomas Anderson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for decision, hearing closed.

## 162-95-BZ & 163-95-BZ

APPLICANT – Sheldon Lobel, P.C., for Salvatore Bonavita, owner; Pelham Bay Fitness Group, LLC, lessee.

SUBJECT – Application April 3, 2011 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on July 30, 2006; Amendment to increase the floor area of the establishment. Waiver of the rules. C2-4/R6 and R7-1 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, Southern side of Westchester Avenue between Mahan Avenue and Hobart Avenue. Block 4196, Lots 9, 11 & 13, Borough of Bronx.

## COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Kenneth Kearns, CB #10.

**ACTION OF THE BOARD** – Laid over to March 6,

2012, at 10 A.M., for continued hearing.

## 290-03-BZ

APPLICANT – Patrick W. Jones, P.C., for Joseph Rosenblatt, owner; Graceful Services, Inc., lessee.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1097 Second Avenue, west side of Second Avenue, 40’ south of East 58<sup>th</sup> Street, Block 1331, Lot 126, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ivan Khoury.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for decision, hearing closed.

## 40-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 2<sup>nd</sup> Avenue, Property LLC, owner; Graceful Services, Inc., lessees.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue 60.5’ south of East 58<sup>th</sup> Street, Block 1331, Lot 25, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ivan Khoury.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for decision, hearing closed.

## 327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Amendment to a Variance (§72-21) to increase the size of an existing

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Synagogue and School (*Beth Gavriel*) and alter the facade. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, between 66<sup>th</sup> Road and 67<sup>th</sup> Avenue, Block 2175, Lot 1, Borough of Queens.

**COMMUNITY BOARD #6Q**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61(tent), Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for adjourned hearing.

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### 29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for deferred decision.

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### 186-11-A

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for 170 Broadway NYC LP c/o Highgate Holdings, Inc., owner.

SUBJECT – Application December 8, 2011 – Application pursuant to Multiple Dwelling Law ("MDL") Section 310(2)(a) to waive the court and yard requirements of MDL Section 26 to facilitate the conversion of an existing office building to a transient hotel. C5-5/LM zoning district.

PREMISES AFFECTED – 170 Broadway, southeast corner of Broadway and Maiden Lane. Block 64, Lot 16, Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Gary Tarnoff and Christina Zimmer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## REGULAR MEETING TUESDAY AFTERNOON, JANUARY 31, 2012 1:30 P.M.

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

### ZONING CALENDAR

#### 231-10-BZ

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school (*Williamsburg Infant and Early Childhood Development center*), contrary to use regulations (§42-11); floor area (§43-122), rear yard (§43-26), and wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

#### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for deferred decision.

#### 108-11-BZ thru 111-11-BZ

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

SUBJECT – Application August 8, 2011 – Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use, contrary to §32-433. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 10, 12, 14 & 16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane. Block 4065, Lots 27, 25, 24 & 21, Borough of Staten Island.

#### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 1:30 P.M., for continued hearing.

#### 112-11-BZ

APPLICANT – Eric Palatnik, P.C., for Louis N. Petrosino, owner.

SUBJECT – Application August 9, 2011 – Variance (§72-21) to legalize the extension of the use and enlargement of

the zoning lot of a previously approved scrap metal yard (UG 18), contrary to §32-10. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54<sup>th</sup> Street. Block 6947, Lot 260. Borough of Brooklyn.

#### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for continued hearing.

#### 130-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Gutman and Arthur Gutman, owners.

SUBJECT – Application September 2, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3600 Bedford Avenue, between Avenue N and Avenue O, Block 7678, Lot 90, Borough of Brooklyn.

#### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

#### 175-11-BZ

APPLICANT – Raymond H. Levin, for Clinton Park Holdings, LLC, owners.

SUBJECT – Application November 10, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*Mercedes House*). C6-3X (Clinton Special District).

PREMISES AFFECTED – 550 West 54<sup>th</sup> Street, aka 770 11<sup>th</sup> Avenue, bounded by 11<sup>th</sup> Avenue, West 54<sup>th</sup> Street, 10<sup>th</sup> Avenue and West 53<sup>rd</sup> Street, Block 1082, Lot 1, Borough of Manhattan.

#### COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Raymond Levin.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 1:30 P.M., for decision, hearing closed.



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## 179-11-BZ

APPLICANT – Herrick, Feinstein LLP, for Ridgedale Realty Company, LLC, owner; Kings of Queens Retro/Retro Fitness of Glendale, lessee.

SUBJECT – Application November 30, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*New Retro Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 65-45 Otto Road, between 66<sup>th</sup> Street and 66<sup>th</sup> Place. Block 3667, Lot 625. Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Jennifer Dickson.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## \*CORRECTION

This resolution adopted on January 10, 2012, under Calendar No. 255-00-BZ and printed in Volume 97, Bulletin Nos. 1-3, is hereby corrected to read as follows:

## 255-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Full Gospel New York Church, owner.

SUBJECT – Application August 12, 2011 – Amendment to a variance (§72-21) to permit a change of use on the 2nd and 3rd floors of the existing building at the premises from UG4 house of worship to UG3 school. M1-1/M2-1 zoning district.

PREMISES AFFECTED – 130-30 31<sup>st</sup> Avenue, north side of 31<sup>st</sup> Avenue, between College Point Boulevard and Whitestone Expressway, block 4360, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a house of worship (Use Group 4); and

WHEREAS, a public hearing was held on this application on December 6, 2011 after due notice by publication in *The City Record*, and then to decision on January 10, 2012; and

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

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

WHEREAS, this application was brought on behalf of Full Gospel New York Church (“Full Gospel Church”), a not-for-profit religious entity; and

WHEREAS, the site is located on the north side of 31<sup>st</sup> Avenue, between the Whitestone Expressway service road and College Point Boulevard, partially within an M1-1 zoning district and partially within an M2-1 zoning district; and

WHEREAS, the site has 348 feet of frontage on 31<sup>st</sup> Avenue, a depth of 600 feet, and a total lot area of 208,803 sq. ft.; and

WHEREAS, the subject site is occupied by a nine-story (including penthouse) mixed-use building with a house of worship (Use Group 4) at the cellar level, first floor, fourth floor and penthouse; a school (Use Group 3) at the second and third floors; and commercial offices (Use Group 6) at the fifth through eighth floors; and

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WHEREAS, the Board has exercised jurisdiction over the subject site since August 4, 1998 when, under BSA Cal. No. 181-97-BZ, the Board granted a variance to permit the use of the cellar through fourth floor and penthouse of the existing building as a church, community center, and accessory offices; and

WHEREAS, on June 27, 2001, under the subject calendar number, the Board permitted the enlargement of the sanctuary, the construction of an accessory gymnasium, and modifications to the interior partitions; and

WHEREAS, subsequently, on May 23, 2002 and July 18, 2007, respectively, the Board issued letters of substantial compliance approving interior modifications at the site; and

WHEREAS, the applicant now seeks an amendment to legalize the conversion of the second and third floors of the subject building from a house of worship (Use Group 4) to a school (Use Group 3); and

WHEREAS, the applicant states that the school is operated as Promise Christian Academy, which was originally affiliated with Full Gospel Church; and

WHEREAS, the applicant states that the subject building is located on an extremely large zoning lot with the tower portion (where the school is located) being at least 70 feet from the nearest lot line; as a result, the surrounding commercial and storage uses do not have any adverse impacts on the proposed school use; and

WHEREAS, the applicant states that the school has a total of 154 students in pre-kindergarten through eighth grades, with 25 faculty and staff members; and

WHEREAS, the applicant further states that 80 percent of students arrive to the school by car and 20 percent arrive by shuttle vans; no students walk to the school; and

WHEREAS, as to faculty, the applicant states that 75 percent of the school's faculty arrive by car and 25 percent arrive by public bus; and

WHEREAS, the applicant represents that the zoning lot, with an area of 208,803 sq. ft., has sufficient on-site space to accommodate all traffic generated by staff and students being dropped off/picked up from the school; and

WHEREAS, the applicant states that the subject site has 330 on-site parking spaces, with 131 reserved for the business office uses on the fifth through eighth floors, and 40 spaces along the front portion of the site dedicated exclusively for school use during the week; and

WHEREAS, accordingly, the applicant states that the school will not have any adverse traffic impacts on the surrounding street network; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 27, 2001, so that as amended this portion of the resolution shall read: "to permit the conversion of the second and third floors from a house of worship (Use Group 4) to a school (Use Group 3); *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and

marked "Received November 22, 2011"-(10) sheets; and *on further condition*:

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 400227642)

Adopted by the Board of Standards and Appeals January 10, 2012.

**\*The resolution has been revised to correct the Plans Dates which read: "Received November 22, 2011"-(9) sheets" now reads: "Received November 22, 2011"-(10) sheets. Corrected in Bulletin No. 6, Vol. 97, dated February 8, 2012.**

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## \*CORRECTION

This resolution adopted on December 13, 2011, under Calendar No. 89-11-BZ and printed in Volume 96, Bulletin No. 51, is hereby corrected to read as follows:

### 89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23<sup>rd</sup> Street, Block 7301, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 25, 2011, acting on Department of Buildings Application No. 320269669, reads:

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

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, and 23-461; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, with continued hearings on November 22, 2011 and December 6, 2011, and then to decision on December 13, 2011 and

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

Ottley-Brown; and

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

WHEREAS, the subject site is located on the southwest corner of Avenue S and East 23<sup>rd</sup> Street within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with 1,946 sq. ft. of floor area (0.65 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 1,946 sq. ft. (0.65 FAR) to 3,027 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 43 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space ratio of 57 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain a perimeter wall with a height of 22'-0", which is a pre-existing non-compliance; and

WHEREAS, the applicant proposes to provide one side yard with a width of 20'-0" and to maintain the pre-existing non-complying side yard with a width of 1'-6"; and

WHEREAS, the Board raised concerns about whether the proposed height and setback comply with zoning district regulations and are confined to the permitted building envelope; and

WHEREAS, in response, the applicant provided axonometric drawings to confirm that the proposal (other than the pre-existing non-complying perimeter wall height) did not exceed the permitted building envelope; and

WHEREAS, the Board determined that the axonometric drawings were not conclusive and stated that DOB should confirm full compliance; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of

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# MINUTES

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the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 9, 2011”-(8) sheets and “November 30, 2011”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,027 sq. ft. (1.01 FAR); a lot coverage of 43 percent; an open space ratio of 57 percent; a maximum perimeter wall height of 22 feet; and side yards with widths of 20’-0” and 1’-6”, as illustrated on the BSA-approved plans;

THAT DOB shall review that the height and setback comply with all regulations related to the permitted building envelope;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, December 13, 2011.

**\*The resolution has been revised to correct the lot coverage from 42 percent to 43 percent and the open space ratio from 58 percent to 57 percent.. Corrected in Bulletin No. 6, Vol. 97, dated February 8, 2012.**

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# BULLETIN

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

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Volume 97, No. 7

February 15, 2012

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### DIRECTORY

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DARA OTTLEY-BROWN

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EILEEN MONTANEZ

*Commissioners*

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352-69-BZ            411 Vanderbilt Avenue, Brooklyn  
348-75-BZ            1050 Forest Avenue, Staten Island  
135-01-BZ            1815/17 86<sup>th</sup> Street, Brooklyn  
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128-11-BZ            1860 East 23<sup>rd</sup> Street, Brooklyn

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# DOCKET

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New Case Filed Up to February 7, 2012  
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**22-12-BZ**

1470 Third Avenue, northwest corner of East 83rd Street and Third Avenue, Block 1512, Lot(s) 33, Borough of **Manhattan, Community Board: 8**. Enlargement of an existing PCE (20-10-BZ) requires BSA special permit approval. C1-9 district.  
-----

**23-12-BZ**

951 Grand Street, between Morgan and Catherine, Block 2924, Lot(s) 48, Borough of **Brooklyn, Community Board: 1**. Use variance to allow the new construction of a story residential building with ground floor retail on a vacant lot in an M1-1 zoning district. M1-1 district.  
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**24-12-A**

2368 12th Avenue, bounded by Henry Hudson Parkway, West 134th Street, 12th Avenue, 135th Street, Block 2005, Lot(s) 32, Borough of **Manhattan, Community Board: 9**. Appeal challenging the Department of Buildings determination that an outdoor accessory sign and structure is not a legal non-conforming use pursuant to ZR §52-00. M1-2 Zoning district. M1-2 district.  
-----

**25-12-A**

110 East 70th Street, south side of East 70th Street between Park Avenue and Lexington Avenue, Block 1404, Lot(s) 67, Borough of **Manhattan, Community Board: 8**. Appeal challenging a Department of Buildings determination that an illegal non-complying residential portion of a building in the required rear yard may be reconstructed pursuant to ZR §54-41. R8B Zoning District. R8B district.  
-----

**26-12-BZ**

73-49 Grand Avenue, located on the northwest corner of the intersection formed by Grand Avenue and 74th Street., Block 2491, Lot(s) 40, Borough of **Queens, Community Board: 5**. Special Permit ZR §73-52 to allow for a commercial district boundary to be extended into a residential zone to allow for accessory commercial parking. C1-2/R6B & R4-1 zoning districts. C1-2/R6B & R4-1 district.  
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**27-12-A**

110 East 70th Street, North side of East 70th Street, 125' east of Park Avenue and 260' west of Lexington Avenue, Block 1404, Lot(s) 67, Borough of **Manhattan, Community Board: 8M**. Appeal challenging Department of Buildings determination that the reconstruction of a building that did not solely contain a one family residence and had more than 75% of the floor area demolished is contrary to ZR §54-41. R8B(LH-1A) Zoning District. R8B(LH-1A) district.  
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**28-12-BZ**

13-15 37th Avenue, 13th Street and 14th Street, bound by 37th Avenue to the southwest., Block 350, Lot(s) 36, Borough of **Queens, Community Board: 1**. Special Permit Z.R. §73-49 to legalize the required accessory off street rooftop parking on the roof of an existing two-story office building contrary to ZR §44-11. M1-1 zoning district. M1-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**FEBRUARY 28, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 28, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **820-67-BZ**

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Automotive Repair shop which expired on November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **636-70-BZ**

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Kings 108 Car Care, Inc. (Mobile S/S), lessee.

SUBJECT – Application January 24, 2012 – Amendment to a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. C2-2/R6 zoning district.

PREMISES AFFECTED – 105-45 to 105-55 Horace Harding Expressway, northwest corner 108<sup>th</sup> Street, Block 1694, Lot 23. Borough of Queens.

**COMMUNITY BOARD #4Q**

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### **172-86-BZ**

APPLICANT – Sheldon Lobel, P.C., for Clearview Mortgage Bank Corporation, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of a previously granted Variance (ZR §72-21) which permitted the construction of a two-story UG6 professional office building which expires on March 31, 2012. R2 zoning district.

PREMISES AFFECTED – 256-10 Union Turnpike, south side of Union Turnpike between 256<sup>th</sup> and 257<sup>th</sup> Streets, Block 8693, Lot 14, Borough of Queens.

**COMMUNITY BOARD #13Q**

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### **248-08-BZ**

APPLICANT – New York City Board of Standards

OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

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

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

**COMMUNITY BOARD #12BX**

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## **APPEALS CALENDAR**

### **659-76-A**

APPLICANT – Walter T. Gorman, P.E., for Daniel and Lauren Mirkin, owners.

SUBJECT – Application November 15, 2011 – Amendment to continue (UG 4) second floor occupancy in a wood frame structure which expired on November 9, 2011. C1-3 /R5B Zoning District.

PREMISES AFFECTED – 253 Beach 116<sup>th</sup> Street, west side, 240' south of Newport Avenue, Block 16212, Lot 19, Borough of Queens.

**COMMUNITY BOARD #14Q**

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### **243-09-BZY**

APPLICANT – Mirza M. Rahman, for South Jamaica Property, LLC, owner.

SUBJECT – Application December 2, 2011 – Extension of time (§11-332) to complete construction for a minor development and obtain a Certificate of Occupancy commenced under the prior R6 Zoning district. R4-1 Zoning district.

PREMISES AFFECTED – 87-12 175<sup>th</sup> Street, corner of 175<sup>th</sup> Street and Warwick, Block 9830, Lot 32, Borough of Queens.

**COMMUNITY BOARD #12Q**

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# CALENDAR

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**FEBRUARY 28, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 28, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**167-11-BZ**

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 20, 2011 – Special Permit (§73-243) to allow for an eating and drinking establishment (use group 6) with an accessory drive-through facility. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**169-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14<sup>th</sup> Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**197-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for 329 Wyckoff Realty, LLC, owner; Wyckoff Fitness Group, LLC, lessee.

SUBJECT – Application December 30, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on a portion of the first and second floors of an existing two-story building. C4-3 zoning districts.

PREMISES AFFECTED – 329 Wyckoff Avenue, northeast corner of the intersection formed by Wyckoff and Myrtle Avenues and Palmetto Street, Block 3444, Lot 33, Borough of Queens.

**COMMUNITY BOARD #5Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 7, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**737-65-BZ**

APPLICANT – Sheldon Lobel, P.C., for Yorkshire Towers Company Successor II, L.P., owner.

SUBJECT – Application November 3, 2011 – Extension of Term permitting the use of 50 surplus tenant parking spaces, within an accessory garage, for transient parking, pursuant to §60 (3) of the Multiple Dwelling Law, which expired on November 3, 2010; Waiver of the Rules. C2-8 (TA), C2-8 and R8B zoning district.

PREMISES AFFECTED – 301-329 East 86<sup>th</sup> Street, corner through lot fronting on East 86<sup>th</sup> Street, East 87<sup>th</sup> Street and Second Avenue. Block 1549, Lot 1. Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Jordan Most.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a transient parking garage, which expired on November 3, 2010; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, and then to decision on February 7, 2012; and

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

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

WHEREAS, the subject premises is bounded by East 86<sup>th</sup> Street to the south, Second Avenue to the west, and East 87<sup>th</sup> Street to the north, partially within a C2-8 zoning district, partially within a C2-8A zoning district within the Special Transit Land Use District, and partially within an R8B zoning district; and

WHEREAS, the site has approximately 320 feet of frontage on East 86<sup>th</sup> Street, 200 feet of frontage on Second

Avenue, 300 feet of frontage on East 87<sup>th</sup> Street, and a total lot area of approximately 62,965 sq. ft.; and

WHEREAS, the site is occupied by a 21-story (including penthouse) residential building with ground floor office and retail use; and

WHEREAS, the cellar and sub-cellar are occupied as a 168-space accessory parking garage; and

WHEREAS, on November 3, 1965, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law to permit a maximum of 50 surplus parking spaces to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on June 19, 2001, the Board granted a ten-year extension of term, which expired on November 3, 2010; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on November 3, 1965, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from November 3, 2010, to expire on November 3, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received 'November 3, 2011'-(3) sheets; and *on further condition*:

THAT this term will expire on November 3, 2020;

THAT all residential leases must indicate that the 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 must be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot will be as approved by the Department of Buildings;

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

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

(DOB Application No. 11068)

Adopted by the Board of Standards and Appeals, February 7, 2012.

# MINUTES

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**624-68-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Term of a Variance (§72-21) to permit wholesale plumbing supply (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07 Northern Boulevard, north side of Northern Boulevard between Utopia Parkway and 189<sup>th</sup> Street, Block 5364, Lots 1, 5, 7, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Todd Dale.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, a waiver, an extension of term for the continued use of the site as a wholesale plumbing supply business (Use Group 16) and commercial uses (Use Group 6), which expired on January 13, 2011, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, with continued hearings on October 18, 2011 and November 22, 2011, and then to decision on February 7, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends disapproval of this application; and

WHEREAS, the Auburndale Improvement Association provided testimony noting concerns about the operation of the site and noted that it concurs with the Community Board’s zoning committee that if the application is granted, the conditions of prior Board approvals should remain as well as additional conditions, which include that (1) trucks must pull into the yard fully and not block the sidewalk; (2) trucks must not double park on Northern Boulevard; (3) the sign for North Shore Plumbing Supply should be repaired; (4) the fence should be repaired; (5) the storage of pipes should be cleaned up and removed from view on Northern Boulevard; (6) the signs advertising the florist must be scaled back; and (7) planters must be maintained on 189<sup>th</sup> Street; and

WHEREAS, the site is located on the north side of Northern Boulevard between 189<sup>th</sup> Street and Utopia Parkway, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 13, 1968 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story enlargement to an existing building occupied as a wholesale plumbing supply business, stores, and office space; and

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

WHEREAS, most recently, on November 26, 2002, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on January 13, 2011; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, the applicant also requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the site was in compliance with the previously-approved signage and directed the applicant to respond to Auburndale Improvement Association’s concerns including traffic safety, landscaping, and debris at the rear of the site; and

WHEREAS, in response, the applicant stated that it will comply with all of Auburndale Improvement Association’s conditions and, more specifically: (1) removed non-compliant signage and stated that it will comply with C1 district regulations; (2) provided photographs of the replanted planters on 189<sup>th</sup> Street; (3) removed debris and graffiti; (4) repaired the lock and chain that secure the refuse area; and (5) will provide a traffic monitor to direct trucks entering and leaving the site and making deliveries; and

WHEREAS, the applicant states that it will maintain the site in compliance with all requested conditions; and

WHEREAS, based upon the above, the Board finds that a reduced extension of term for five years and a one-year extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 13, 1968, so that as amended this portion of the resolution shall read: “to extend the term for five years from the date of the grant, to expire on February 7, 2017 and to allow a one-year extension of time to obtain a certificate of occupancy; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘June 7, 2011’-(1) sheet and ‘December 2, 2011’-(2) sheets; and *on further condition*:

THAT the term of the grant will expire on February 7, 2017;

THAT the site will be maintained clean of debris and graffiti;

THAT all lighting will be directed downward and away from adjacent residences;

THAT all landscaping will be maintained as reflected on the Board-approved plans;

THAT there will be no parking on the sidewalks;

# MINUTES

THAT all signage will be maintained in accordance with the BSA-approved plans;

THAT trucks must pull into the yard fully, must not block the sidewalk, and must not double park on Northern Boulevard;

THAT a sign will be maintained directing customers of North Shore Plumbing Supply not to block the sidewalk;

THAT the businesses will provide a parking monitor to guide trucks making deliveries and entering and exiting the site in a manner to secure the safety of the sidewalk;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by February 7, 2013;

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

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

THAT the Department of Buildings must 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.” (N.B. 836/68)

Adopted by the Board of Standards and Appeals February 7, 2012.

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## 742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue. Block 2836, Lot 15, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for an automotive repair and gasoline service station; and

WHEREAS, a public hearing was held on this application on July 26, 2011, after due notice by publication in

*The City Record*, with continued hearings on September 13, 2011, October 18, 2011 and November 22, 2011, and then to decision on February 7, 2012; and

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

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application, citing concerns that the certificate of occupancy has not been obtained and the operator has not complied with the conditions from previous grants; and

WHEREAS, the site is located on the southwest corner of Bay Street and Vanderbilt Avenue, within a C1-1 (R3-2) zoning district; and

WHEREAS, the site is occupied by an automotive service station with accessory uses; and

WHEREAS, the applicant states that only the automotive repair use is currently operating at the site, but that it intends to reinstitute the gasoline station operations at the site as soon as possible; and

WHEREAS, the Board has exercised jurisdiction over the site since May 18, 1971 when, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with accessory uses at the site, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on February 26, 2008, the Board granted an extension of term and an amendment to permit the use of a storage trailer adjacent to the repair building, which expired on May 18, 2011; a condition of the grant was that a certificate of occupancy be obtained by February 26, 2009; and

WHEREAS, the applicant now seeks an additional extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to revise the site plan to reflect that one of the curb cuts along Bay Street has been removed, plant landscaping in accordance with the previously approved plans, and repave the site; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that the northernmost curb cut on Bay Street has been removed, and submitted photographs reflecting that evergreen trees and bushes have been planted adjacent to the neighboring residence along the western border of the site and in the planter at the northeast corner of the site, in accordance with the previously-approved plans; and

WHEREAS, as to the repaving of the site, the applicant submitted a fuel tank installation plan which reflects that new fuel tanks will be installed in April 2012 in anticipation of the reinstatement of the gasoline station operations, and that the site will be repaved immediately following the installation of the new fuel tanks; and

WHEREAS, the applicant states that installation of the fuel tanks is expected to take approximately 60 days; and

WHEREAS, the applicant submitted an affidavit from the owner stating that the site will be repaved upon completion

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of the fuel tank installation, and in any event the site will be repaved prior to June 30, 2012; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals reopens, and amends the resolution, as adopted May 18, 1971, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on May 18, 2021, and to grant an extension of time to obtain a certificate of occupancy for one year from the date of this grant, to expire on February 7, 2013; on condition:

THAT the term will expire on May 18, 2021;

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

THAT all landscaping will be planted and maintained per the BSA-approved plans;

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

THAT a new certificate of occupancy will be obtained by February 7, 2013;

THAT the asphalt on the site must be repaved by June 30, 2012;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 500901688)

Adopted by the Board of Standards and Appeals, February 7, 2012.

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## 352-69-BZ

APPLICANT – Sheldon Lobel, P.C., for Dr. Alan Burns, owner.

SUBJECT – Application September 29, 2011 – Extension of Term (§72-21) of a Variance for the continued operation of a UG16 animal hospital (*Brooklyn Veterinary Hospital*) which expired on September 30, 1999; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 411 Vanderbilt Avenue, east side of Vanderbilt Avenue between Greene and Gates Avenue, Block 1960, Lot 28, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 10 A.M., for decision, hearing closed.

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## 348-75-BZ

APPLICANT – Eric Palatnik, P.C., for Moises A. Villa Delgado, owner.

SUBJECT – Application October 31, 2011 – Extension of the term of an approved variance that expired on March 9, 1996 to allow for a UG 16 animal hospital, contrary to use regulations. Waiver of the Rules. R3-2 zoning district  
PREMISES AFFECTED – 1050 Forest Avenue, between Manor Road and Raymond Place, Block 315, Lot 39, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for continued hearing.

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## 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3" northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for continued hearing.

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## 148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application June 23, 2011 – Amendment to an approved special permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47) and side yard (§23-461). The amendment seeks to correct open space and floor area calculations and adds a waiver to the perimeter wall height. R3-2 zoning district.  
PREMISES AFFECTED – 1559 East 29<sup>th</sup> Street, between Avenue P and Kings Highway, Block 7690, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 20,

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2012, at 10 A.M., for continued hearing.  
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## APPEALS CALENDAR

### 118-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Jean Scanlon, lessee.

SUBJECT – Application August 18, 2011 – Proposed building not fronting a mapped street, contrary General City Law 36, and in the bed of a mapped street, contrary to General City Law 35, with a private disposal system in the bed of a mapped street contrary to Department of Buildings’ policy.

PREMISES AFFECTED – 811 Liberty Lane, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES – None.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 26, 2012, acting on Department of Buildings Application No. 420326686, reads in pertinent part:

- A1- The site is located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law
- A2- The site and building is not fronting on an official mapped street therefore, no permit or Certificate of Occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York .
- A3- The private disposal system is in the bed of a mapped street contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in the *City Record*, and then to decision on February 7, 2012; and

WHEREAS, by letter dated February 2, 2012 the Fire Department states that it has no objection to the subject proposal, with the condition that the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and

WHEREAS, the applicant submitted plans reflecting that the building will be fully sprinklered in accordance with the Fire Department’s request; and

WHEREAS, by letter dated August 30, 2011, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated November 2, 2011, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

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

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

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 26, 2011, acting on Department of Buildings Application No. 420326686, is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received January 24, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the building will be fully sprinklered in accordance with the BSA-approved plans;

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

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

Adopted by the Board of Standards and Appeals, February 7, 2012.  
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### 232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4<sup>th</sup> Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9<sup>th</sup> Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

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**ACTION OF THE BOARD** – Off Calendar.  
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**15-11-A**

APPLICANT – Slater & Beckerman, LLP., for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building's determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 14, 2012, at 10 A.M., for adjourned hearing.  
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**86-11-A**

APPLICANT – Cozen O'Connor, for Perl binder Holdings, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the Department of Buildings' revocation of an approval to permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2<sup>nd</sup> Avenue, northwest corner of East 36<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 10 A.M., for adjourned hearing.  
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**149-11-A thru 151-11-A**

APPLICANT – Sheldon Lobel, P.C., for Eastern 7 Inc., owner.

SUBJECT – Application September 16, 2011 – Appeal pursuant to NYC Charter §666.7 to permit construction of three, two-family homes within 30'-0" of the street line of Eastern Parkway, contrary to Administrative Code §18-112 and New York City Building Code §3201.3.1. R6 zoning district.

PREMISES AFFECTED – 1789, 1793 & 1797 St. John's Place, northeast corner of intersection formed by St. John's Place and Eastern Parkway, Block 1471, Lot 65, 67, 68, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 10 A.M., for continued hearing.  
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**161-11-A**

APPLICANT – Quinn McCabe, LLP, for Britton Property, Inc., owner.

SUBJECT – Application October 14, 2011 – Appeal seeking to vacate a Stop Work Order and rescind revocation of building permits issued for failure to obtain authorization from the adjacent property owner. R7B Zoning District.

PREMISES AFFECTED – 82-20 Britton Avenue, east side of Britton Avenue between Broadway and Layton Street, Block 1517, Lot 3, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Christopher PP. McCabe and Yung Cheng Chou.

For Opposition: Lisa Orrantia of Department of Buildings and Amelia Arcamone-Makinano.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JANUARY 31, 2012  
1:30 P.M.**

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

**ZONING CALENDAR**

**54-11-BZ**

**CEQR #11-BSA-087K**

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**APPEARANCES –**

For Applicant: Lyra J. Altman.

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

**THE VOTE TO GRANT –**

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

**THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 25, 2011, acting on Department of Buildings Application No. 310101047, reads in pertinent part:

Proposed number of accessory parking spaces for the building at the premises is less than the number of parking spaces required by ZR Section 36-21; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C1-3 (R6) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use community facility/commercial building from 231 to 177, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in The City Record, with continued hearings on September 13, 2011, October 18, 2011, November 22, 2011 and January 10, 2012, and then to decision on February 7, 2012; and

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

WHEREAS, City Council Member David G.

Greenfield and New York State Assemblymember William Colton provided testimony in opposition to the application; and

WHEREAS, Community Board 12, Brooklyn, recommended disapproval of the application; and

WHEREAS, the Neighbors for the Preservation and Development of Brooklyn Southwest, represented by counsel, provided testimony in opposition to the proposal stating concerns that (1) the applicant does not meet the requirements of the special permit including that it act in good faith, (2) there is a discrepancy between the required number of parking spaces set forth in the as-of-right approval and the proposal for a reduction before the Board, (3) there are flaws in the parking studies and the calculation of parking demand, and (4) any reduction in parking will negatively impact the surrounding area; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application, citing concerns with its effect on parking in the surrounding neighborhood due to high parking demand associated with three area schools and existing parking demands; and

WHEREAS, the subject site is located on a through lot with frontage on Bay Parkway, 61<sup>st</sup> Street, and 60<sup>th</sup> Street, within a C1-3 (R6) zoning district; and

WHEREAS, the site is under construction with an as-of-right mixed-use community facility/commercial building, pursuant to DOB approval; and

WHEREAS, the applicant initially proposed a nine-story mixed-use community facility/commercial building with 93,920 sq. ft. of floor area and 120 accessory parking spaces, which required a reduction from the required 231 parking spaces (four for commercial use and 227 for community facility use); and

WHEREAS, at the Board's direction and after several iterations, the applicant now proposes a nine-story mixed-use community facility/commercial building with 92,304 sq. ft. of floor area (90,837 sq. ft. for community facility use and 1,467 sq. ft. for commercial use) and 177 accessory parking spaces with a program as follows: (1) 57 parking spaces in the cellar (including 18 stackers); (2) UG 6 commercial use and UG 4 community facility use on the first floor; (3) 48 parking spaces on the second floor; (4) 72 parking spaces on the third floor; and (5) community facility use on the fourth through ninth floors; and

WHEREAS, the initial proposal reflected an attended parking lot without stackers and the current proposal reflects an attended parking lot with stackers; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C1-3 (R6) zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for ambulatory diagnostic or treatment facilities in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 36-21 the total number of required parking spaces for all uses at the site is 231; and



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WHEREAS, the applicant represents that the proposed 177 parking spaces are sufficient to accommodate the parking demand generated by the use of the site; and

WHEREAS, the applicant notes that 1,467 sq. ft. of floor area in the building is occupied by commercial space, which is not in parking category B1 and therefore the associated four required spaces have been excluded from the calculations for the requested reduction in parking; and

WHEREAS, the applicant states that the remaining 90,837 sq. ft. of floor area at the site will be occupied by ambulatory diagnostic or treatment facility space, which is eligible for the parking reduction under ZR § 73-44; at a rate of one required parking space per 400 sq. ft. of floor area, 227 parking spaces are required for this use; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 227; as noted, the special permit allows for a reduction from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area, which would reduce the required parking for these uses to 114 spaces; and

WHEREAS, as noted, an additional four parking spaces are required for the 1,467 sq. ft. of floor area occupied by commercial space, which is not eligible for the special permit; and

WHEREAS, thus, the special permit allows for a reduction to a total of 118 parking spaces on the site; and

WHEREAS, the applicant notes that the proposed total of 177 accessory parking spaces would provide 59 more spaces than the minimum of 118 required under the special permit; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant states that the facility will be occupied by existing ambulatory diagnostic facilities currently operating in the area, including those associated with Maimonides Hospital, who are waiting to move to the site and who have committed to lease 52,650 sq. ft. of the building; the remaining floor area is anticipated to be used and restricted to similar ambulatory diagnostic uses; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response to the community's concerns about parking demand, the applicant asserts that its studies

reflect a peak parking demand of 131 cars, and the proposed 173 spaces for community facility use provide an excess of 42 parking spaces, or 32 percent more than is required to satisfy the peak parking demand; and

WHEREAS, the applicant asserts that the onsite parking will be able to accommodate the facility's parking demand and will not create a demand for curbside or other off-site parking; and

WHEREAS, in support of this assertion, the applicant submitted a parking demand analysis into the record; and

WHEREAS, the applicant notes that its parking demand analysis was based on Institute of Transportation Engineers (ITE) traffic standards to establish the number of person trips to the site, which reflects 317 person trips during peak periods; and

WHEREAS, however, the applicant notes that to establish the number of people who would drive to the site, it performed a parking demand survey from the existing facilities to be relocated to the site, which reflected that 38 percent of patients and employees would drive to the site daily; and

WHEREAS, the applicant then applied the 38 percent to the ITE data and found that the peak parking demand would be 121 spaces, which is a revision of a prior determination of 131 spaces due to a failure to account for the overlap of 75 percent of patients of one of the building's programs (RadNet) to other programs in the building; and

WHEREAS, the applicant notes that if it were to use its survey data, rather than the adjusted ITE data and apply it to the entire building, the peak parking demand would be 143 spaces; and

WHEREAS, the applicant derives the more conservative 143 spaces by noting that, based on surveys of the existing offsite facilities, 151 people (93 patients and 58 staff) will drive to the site to visit the practices occupying 52,650 sq. ft. of the already leased space; the applicant extrapolated that the remaining portions of the building not already leased will be occupied by tenants with similar travel characteristics and thus, for the additional 38,187 sq. ft. of community facility space, the result would be 139 additional daily driving trips (91 patients and 48 staff); and

WHEREAS, the applicant's analysis resulted in a conclusion that 151 trips (based on the survey) and 139 trips (based on extrapolation) amount to 290 daily vehicle trips, consisting of 184 patient and 106 staff trips; and

WHEREAS, the applicant asserts that patient visits will have an anticipated duration of two hours and will be spread across the course of a ten-hour day from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant concludes that the proposed 173 spaces would accommodate the peak parking demand under either the ITE or parking survey of existing facilities methodologies as the adjusted ITE analysis reflects a peak parking demand of 121 parking spaces for community facility use, or 52 fewer spaces than the proposed, and the parking survey analysis reflects a demand of 143 parking spaces, or 30 fewer than the proposed; and

WHEREAS, during the hearing process, the Board

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directed the applicant to explore redesign of the parking facilities to maximize utility and to eliminate any non-essential space (such as the cafeteria) in the cellar to allow for additional parking; and

WHEREAS, in response, the applicant stated that the first floor cannot be re-designed since it will be occupied by MRI equipment which, due to its sensitivity and size must be located on the first floor so that it can be serviced and moved through a portion of removable façade; and

WHEREAS, the applicant has met with DOB to review the maneuverability and other parking calculations and has maximized the number of stackers, which it will reserve for employee use; and

WHEREAS, in response to questions about maximum parking space occupancy, the applicant confirmed DOB's requirement for 200 sq. ft. per car and 153 sq. ft. per car for the second car in a stacker; and

WHEREAS, accordingly, after the redesign of the cellar space and removal of all nonessential spaces, the applicant states that DOB would not approve any more spaces and/or stackers than the 57 proposed for the cellar and the corresponding numbers on the second and third floor; and

WHEREAS, based upon the applicant's revised analysis and current parking layout, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, in response to the opposition's concerns that the surveys which analyze the number of people coming to the site by car versus public transportation may not be comparable to the proposed location, the applicant noted that public transportation access to the subject site, including two buses (B6 and B9) within one block of the site, two subways (F and N) approximately one-third of a mile from the site, and four buses (B4, B11, B8, and B82) within .6 to .91 miles from the site, is better than that of the existing sites studied in the transportation surveys; and

WHEREAS, accordingly, the applicant asserts that the car versus public transportation assumptions it applied to the proposed site are conservative since based on areas with less access to public transportation; and

WHEREAS, the applicant also notes that it will be providing a bicycle storage room and states that it will encourage bicycle use and carpooling; and

WHEREAS, the applicant also states that it approached several potential off site locations for parking, and was unable to find any willing to provide parking spaces to the facility; and

WHEREAS, in response to the opposition's questions about different DOB approvals, the Board notes that DOB has approved as-of-right plans, which allow the applicant to continue construction, in contrast to the proposed plans before the Board which will allow for the as-of-right plans to be amended; and

WHEREAS, the Board notes that 231 spaces are required for the proposed building and that a smaller building was approved at DOB, which requires only 206 parking spaces; the waiver request is from 231 spaces (less

the four spaces for commercial use); and

WHEREAS, the Board notes that the special permit allows for a reduction in parking by 50 percent and that the current proposal for 173 spaces for community facility use reflects a reduction of 54 spaces or approximately 24 percent; and

WHEREAS, the Board notes that the proposed use is as-of-right and the reduction is less than half the maximum reduction contemplated by the special permit; and

WHEREAS, accordingly, the Board finds that the proposed use will not have an adverse impact on the community, will not interfere with any public improvement project, and will not interfere with the existing street system; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA087K, dated July 11, 2011; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to permit, within an C1-3 (R6) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use community facility/commercial building from 231 to 177, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 1, 2012"- twenty-two ( 22 ) sheets, and on further condition:

# MINUTES

THAT there will be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of 177 parking spaces will be provided in the accessory parking garage in the subject building;

THAT no certificate of occupancy will be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the layout and design of the accessory parking lot will be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, February 7, 2012.

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## 166-11-BZ

### CEQR #12-BSA-035M

APPLICANT – Ellen Hay/Wachtel & Masyr LLP, for Roc Le Triomphe Associates LLC, owners; Crunch LLC, lessee. SUBJECT – Application October 24, 2011 – Special Permit (§73-36) to continue the operation of the Physical Culture Establishment (*Crunch Fitness*). C2-8 (TA) zoning district. PREMISES AFFECTED – 1109 Second Avenue, aka 245 East 58<sup>th</sup> Street, west side of Second Avenue between East 58<sup>th</sup> and East 59<sup>th</sup> Streets, Block 1332, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Ellen Hay.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 12, 2011, acting on Department of Buildings Application No. 120857260, reads in pertinent part:

Proposed Physical Culture establishment is not permitted as per ZR 73-36 unless granted special

permits by the Board of Standards and Appeals as per ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an C2-8 zoning district within the Special Transit Land Use District (TA), the operation of a physical culture establishment (“PCE”) in a portion of the first floor, cellar, and sub-cellar of a 29-story mixed-use residential/commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, and then to decision on February 7, 2012; and

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

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the subject site located on the west side of Second Avenue between East 58<sup>th</sup> Street and East 59<sup>th</sup> Street in a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site is occupied by a 29-story mixed-use residential/commercial building with residential use on the fourth through 29<sup>th</sup> floors and commercial use on the sub-cellar, cellar, first, and second levels; and

WHEREAS, the Board first approved the PCE on July 22, 1997, pursuant to BSA Cal. No. 195-96-BZ, for a term of ten years which expired on October 1, 2006; and

WHEREAS, the site is also the subject of a City Planning special permit for the building pursuant to ZR § 74-95, which was modified to allow for the PCE and associated signage; and

WHEREAS, the PCE occupies 36,119 sq. ft. of floor space on portions of the sub-cellar, cellar, and first floor levels; and

WHEREAS, the PCE is operated as Crunch Fitness; and

WHEREAS, the PCE operates Monday through Thursday 5:00 a.m. to 11:00 p.m.; Friday 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that commercial and accessory residential uses on the second and third floor separate and, thus serve as a buffer between, the PCE on the first floor from the residential use on the fourth floor and above; and

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

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

# MINUTES

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA035M, dated October 19, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an C2-8 zoning district within the Special Transit Land Use District (TA), the operation of a physical culture establishment in a portion of the first floor, cellar, and sub-cellar of a 29-story mixed-use residential/commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 20, 2011"- (5) sheets, and *on further condition*:

THAT the term of this grant will expire on February 7, 2012;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

THAT Local Law 58/87 compliance will be as

reviewed and approved by DOB;

THAT sound attenuation measures must be installed in the PCE as shown on the Board-approved plans;

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

THAT substantial construction will be completed in accordance with ZR § 73-70;

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

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

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

Adopted by the Board of Standards and Appeals, February 7, 2012.

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### 3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22<sup>nd</sup> Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for adjourned hearing.

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### 76-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.

SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/Ocean Parkway zoning district.

PREMISES AFFECTED – 2263 East 2<sup>nd</sup> Street, approximately 235' south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

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

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# MINUTES

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**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for decision, hearing closed.  
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2012, at 1:30 P.M., for decision, hearing closed.  
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*Jeff Mulligan, Executive Director*

**104-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for continued hearing.  
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*Adjourned: P.M.*

**177-11-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for St Anns ABH Owner LLC, owners.

SUBJECT – Application November 16, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within portions of an existing building. C2-3(R7X) zoning district.

PREMISES AFFECTED – 601 East 156<sup>th</sup> Street, aka 800 St. Ann’s Avenue, north east corner of East 156<sup>th</sup> Street and St. Ann’s Avenue, Block 2618, Lot 7501, Borough of Bronx.

**COMMUNITY BOARD #1BX**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for continued hearing.  
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**188-11-BZ**

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LP, owner.

SUBJECT – Application December 9, 2011 – Variance (§72-21) to allow for the conversion of floors two through six from commercial use to residential use, contrary to use regulations (§42-10). M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Frank E. Chaney and Jack Freeman.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 6,

# MINUTES

## \*CORRECTION

This resolution adopted on January 24, 2012, under Calendar No. 128-11-BZ and printed in Volume 97, Bulletin Nos. 4-5, is hereby corrected to read as follows:

### 128-11-BZ

#### CEQR #12-BSA-010K

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23<sup>rd</sup> Street, west side of East 23<sup>rd</sup> Street, between Avenue R and Avenue S, Block 6828, Lot 31, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Lyra J. Altman.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 8, 2011, acting on Department of Buildings Application No. 320325028, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, and then to decision on January 24, 2012; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

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

WHEREAS, the subject site is located on the west side of East 23<sup>rd</sup> Street, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,127 sq. ft. (0.53 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,127 sq. ft. (0.53 FAR) to 3,964 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-3 5/16", and to maintain the existing side yard along the southern lot line with a width of 8'-10 1/2" (two side yards with minimum widths of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which

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# MINUTES

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does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 16, 2011”-(7) sheets and “January 11, 2012”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,964 sq. ft. (0.99 FAR); a minimum open space ratio of 61 percent; a maximum lot coverage of 42 percent; a side yard with a minimum width of 4’-3 5/16” along the northern lot line; a side yard with a minimum width of 8’-10 ½” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, January 24, 2012.

**\*The resolution has been revised to correct the 10<sup>th</sup> WHEREAS, which read in part: “...open space ratio of 61 percent (150 percent is the minimum required)...” now reads: “...open space ratio of 61 percent (65 percent is the minimum required)...”. Corrected in Bulletin No. 7, Vol. 97, dated February 15, 2012.**

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 97, No. 8

February 22, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

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764-56-BZ           200-05 Horace Harding Expressway, Queens  
548-79-BZ           247-251 West 29<sup>th</sup> Street, Manhattan  
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166-11-BZ           1109 Second Avenue, aka 245 East 58<sup>th</sup> Street, Manhattan

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# DOCKET

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New Case Filed Up to February 14, 2012  
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**29-12-A**

159-17 159th Street, Meyer Avenue, east of 159th Street, west of Long Island Railroad., Block 12178, Lot(s) 82, Borough of **Queens, Community Board: 12**. Overturn DOB Commissioner's padlock order of closure (and underlying OATH report and recommendation) with respect to property, which has applicant contends has a "grandfathered" legal pre-existing (pre-zoning) commercial/industrial use which pre-dated the applicable zoning and should be allowed to continue. R-3-2 district.  
-----

**30-12-BZ**

142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B., Block 5020, Lot(s) 34, Borough of **Queens, Community Board: 7**. Special Permit ZR§73-49 to permit accessory parking on the roof of an existing one-story supermarket, contrary to ZR§36-11. R6/C2-2 zoning district R6/C2-2 district.  
-----

**31-12-BZ**

280 West 155th Street, corner of Frederick Douglass Boulevard and West 155th Street., Block 2040, Lot(s) 48,61 &62, Borough of **Manhattan, Community Board: 10**. Special Permit (ZR 73-50) to seek a waiver of rear yard requirements per ZR Section 33-292 to permit the construction of commercial building. C8-3 zoning district. C8-3 district.  
-----

**32-12-A**

110 Beach 220th Street, west side Beach 220th Street, 160' south of Breezy Point Boulevard., Block 16350, Lot(s) p/o400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade to the existing private disposal system located partially in the bed of the service road is contrary to Building Department policy. R4 district.  
-----

**33-12-A**

78-70 Winchester Boulevard, landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550,500, Borough of **Queens, Community Board: 13**. Propped construction of 2 mixed use buidlings , 2 residetial and one community facility that don't have frontage on a legally mapped street contrary to General City Law Section 36 . C8-1 /R3-2 Zoning Districts . C8-1 district.  
-----

**34-12-A**

78-10 Winchester Boulevard, premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550,500, Borough of **Queens, Community Board: 13**. Propped construction of 2 mixed use buidlings , 2 residetial and one community facility that don't have frontage on a legally mapped street contrary to General City Law Section 36 . C8-1 /R3-2 Zoning Districts . C8-1 district.  
-----

**35-12-A**

78-70 Winchester Boulevard, landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550,500, Borough of **Queens, Community Board: 13**. Propped construction of 2 mixed use buidlings , 2 residetial and one community facility that don't have frontage on a legally mapped street contrary to General City Law Section 36 . C8-1 /R3-2 Zoning Districts . C8-1 district.  
-----

**36-12-A**

78-70 Winchester Boulevard, landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550, 500, Borough of **Queens, Community Board: 13**. Propped construction of 2 mixed use buidlings , 2 residetial and one community facility that don't have frontage on a legally mapped street contrary to General City Law Section 36 . C8-1 /R3-2 Zoning Districts . C8-1 district.  
-----

**37-12-A**

78-70 Winchester Boulevard, landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550,500, Borough of **Queens, Community Board: 13**. Propped construction of 2 mixed use buidlings , 2 residetial and one community facility that don't have frontage on a legally mapped street contrary to General City Law Section 36 . C8-1 /R3-2 Zoning Districts . C8-1 district.  
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**38-12-A**

131 Aviston Street, 80' northwest corner of intersection of Aviston Street and Riga Street., Block 4683, Lot(s) 22, Borough of **Staten Island, Community Board: 3**. Proposed construction of a sigle family home that does not front on a legally mapped street contrary to General City Law Section 36 . R3-1 Zoning District . R3-1 district.  
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# DOCKET

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**39-12-A**

133 Aviston, 80' northwest corner of intersection of Aviston Street and Riga Street., Block 4683, Lot(s) 23, Borough of **Staten Island, Community Board: 3.** Proposed construction of a single family home that does not front on a legally mapped street contrary to General City Law Section 36 . R3-1 Zoning District . district.  
-----

**40-12-BZ**

2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road., Block 2402, Lot(s) 1, Borough of **Staten Island, Community Board: 2.** Application for special permit for new PCE of @ 10,000 SF 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.**

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# CALENDAR

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**MARCH 6, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 6, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**433-61-BZ**

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.  
SUBJECT – Application November 28, 2012 – Extension of Term (11-411) of a previously approved variance which permitted in a residence use area district the erection of a one story and mezzanine retail store building; Waiver of the rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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**997-84-BZ**

APPLICANT – Akerman Senterfitt, for 222 Union Associates, owner; Central Parking System of New York, Inc., lessee.

SUBJECT – Application February 6, 2012 – Extension of Time to obtain a Certificate of Occupancy for an existing six story public parking garage with an automobile rental establishment which expired on June 4, 2008. R6A zoning district.

PREMISES AFFECTED – 800 Union Street, southside of Union Street between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 957, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**  
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**271-90-BZ**

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

SUBJECT – Application October 11, 2011 – Pursuant to (ZR 11-411) an Extension of Term of a previously granted Variance (72-21) for the continued operation of a UG16 Automotive Repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED –68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

**COMMUNITY BOARD #2Q**  
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**APPEALS CALENDAR**

**155-11-A**

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning. R3X zoning district.  
PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**  
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**162-11-A**

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue construction commenced under prior C6- 1 zoning district regulations. C4-4A Zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #3M**  
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**MARCH 6, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 6, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**195-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.

SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2070 East 21<sup>st</sup> Street, west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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# CALENDAR

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**4-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56<sup>th</sup> and Park (NY) Owner, LLC.

SUBJECT – Application January 11, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C5-3/C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 432-440 Park Avenue, northwest corner of Park Avenue and East 56<sup>th</sup> Street, Block 1292, Lot 33, 43, 45, 46, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 14, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**141-66-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application June 29, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010; Amendment to enclose open parking area; and Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9<sup>th</sup> Street, Block 450, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Fredrick A. Becker.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of term of a previously granted variance to permit the construction of a one-story building for use as a garage (Use Group 8), and an amendment to permit an enlargement of the previously approved building; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in *The City Record*, and then to decision on February 14, 2012; and

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

WHEREAS, Community Board 3, Manhattan, states that it takes no action regarding this application; and

WHEREAS, the subject site is located on the south side of East 9<sup>th</sup> Street between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage on East 9<sup>th</sup> Street and a total lot area of 2,125 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story building operated as a garage for the parking of motorcycles, with a total floor area of 2,125 sq. ft. (1.0 FAR); and

WHEREAS, the Board has exercised jurisdiction over

the subject site since May 24, 1966 when, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit the construction of a one-story building for use as a garage (Use Group 8), with the sale of used cars (Use Group 16) and parking in the open area, for a term of ten years; and

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

WHEREAS, most recently, on October 31, 2000, the Board granted a ten-year extension of term, which expired on July 1, 2010; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, the applicant states that the lot is now exclusively used for the parking of motorcycles (Use Group 8); and

WHEREAS, the applicant also requests an amendment to legalize an increase in floor area of the building from 1,075 sq. ft. (0.51 FAR) to 2,125 sq. ft. (1.0 FAR); and

WHEREAS, the applicant states that the floor area was increased by enclosing the front area of the site to provide a safer area for the storage of motorcycles; and

WHEREAS, specifically, the applicant represents that there had been incidents of vandalism in the open area at the front of the site, and that enclosing the open area has made the site safer, quieter, and cleaner, while resulting in no visual impact on nearby buildings; and

WHEREAS, the applicant notes that the previous grant allowed the front area of the site to be used for the parking and storage of motor vehicles, and therefore the enclosure of the front area does not increase the actual amount of space being used for parking on the site; and

WHEREAS, the Board notes that the proposed FAR of 1.0 is significantly less than the maximum permitted FAR in the subject R8B zoning district of 4.0; and

WHEREAS, based upon the above, the Board finds the requested extension of term and amendments are appropriate, with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on May 24, 1966, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from July 1, 2010, to expire on July 1, 2020, and to permit the noted modifications to the previous grant; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘January 30, 2012’-(2) sheets; and *on further condition*:

THAT the term of this grant will expire on July 1, 2020;

THAT the above condition will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and will be listed on the certificate of occupancy;

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

THAT the Department of Buildings will ensure compliance with all other applicable provisions of the Zoning

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Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 120720899)

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 248-75-BZ

APPLICANT – Alfonso Duarte, P.E., for 444 East 86<sup>th</sup> Street Owners Corp., owner; Quick Park, lessee.

SUBJECT – Application August 8, 2011 – Extension of Term permitting the use of a maximum of 50 transient parking spaces within an accessory garage granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law, which expired on October 14, 2010; Waiver of the Rules. R8B, R10 and C1-5 zoning districts.

PREMISES AFFECTED – 1621 York Avenue, aka 436 East 86<sup>th</sup> Street, west side of York Avenue, Block 1565, Lot 29, Borough of Manhattan.

## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Alfonso Duarte.

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a transient parking garage, which expired on October 14, 2010; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 24, 2012, and then to decision on February 14, 2012; and

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

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

WHEREAS, the subject premises is an irregular-shaped lot with approximately 143 feet of frontage on the south side of East 86<sup>th</sup> Street and 50 feet of frontage on the west side of York Avenue, partially within an R10 zoning district, partially within an R10A zoning district, and partially within a C1-5 (R10A) zoning district; and

WHEREAS, the site is occupied by a 37-story residential building; and

WHEREAS, the cellar and a portion of the first floor are occupied by a 126-space accessory parking garage; and

WHEREAS, on October 14, 1975, under the subject

calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law to permit a maximum of 50 surplus parking spaces on the first floor to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 12, 2000, the Board granted a ten-year extension of term, which expired on October 14, 2010; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, at hearing, the Board directed the applicant to clarify the signage and hours of operation of the site; and

WHEREAS, in response, the applicant submitted a revised plan and signage analysis reflecting that the signage complies with C1 district signage regulations except that the illuminated sign projects six inches beyond the maximum permitted projection across the street line; and

WHEREAS, the applicant states that the illuminated sign is the only sign that is visible to motorists travelling in either direction along York Avenue, since the garage entrance is otherwise hidden from motorists’ view; and

WHEREAS, the applicant states that the hours of operation for the garage are as follows: Monday through Wednesday, from 6:00 a.m. to 12:00 a.m.; Thursday and Friday, from 6:00 a.m. to 2:00 a.m.; and Saturday and Sunday, from 7:00 a.m. to 2:00 a.m.; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on October 14, 1975, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from October 14, 2010, to expire on October 14, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘August 8, 2011’- (2) sheets; and *on further condition*:

THAT this term will expire on October 14, 2020;

THAT all residential leases must indicate that the 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 must be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT all signage will be in accordance with the BSA-approved plans;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot will be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the

# MINUTES

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

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

(DOB Application No. 102824650)

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 8-10-BZ

APPLICANT – NYC Board of Standards and Appeals

Owner – Adel Kassim

SUBJECT – Application January 21, 2010 – Dismissal for Lack of Prosecution – Variance (§72-21) to allow the legalization and enlargement of an existing supermarket, contrary to use regulations (§22-00). R4 zoning district.

PREMISES AFFECTED – 58-14 Beach Channel Drive, northeast corner of the intersection of Beach 59<sup>th</sup> Street and Beach Channel Drive, Block 16004, Lot 96, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application dismissed.

**THE VOTE TO DISMISS** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Quick Fitness, lessee.

SUBJECT – Application November 30, 2011 – Extension of Time to obtain a Certificate of Occupancy of a Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Quick Fitness*) which expired on August 3, 2011. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Richard Lobel and Joshua Rinesmith.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on August 3, 2011; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in *The City Record*, and then to decision on February 14, 2012; and

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

WHEREAS, the site is located on the east side of Eckford Street, between Engert Avenue and Newton Street, in an M1-2/R6A zoning district within the MX-8 Special Mixed-Use District; and

WHEREAS, the site is a single zoning lot occupied by three buildings: (1) a three-story mixed-use industrial/commercial building located on the northwestern portion of the lot (22 Eckford Street); (2) a one-story industrial building located on the northeastern portion of the lot (20 Eckford Street); and (3) a one-story commercial building located on the southern portion of the lot (16 Eckford Street); and

WHEREAS, the PCE occupies a total floor area of 4,710 sq. ft. on the first floor of the building located at 16 Eckford Street; and

WHEREAS, the PCE is operated as Quick Fitness; and

WHEREAS, on August 3, 2010 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of a PCE on a 4,710 sq. ft. portion of the first floor of the building located at 16 Eckford Street, for a term of ten years; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by August 3, 2011; and

WHEREAS, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained due to delays in obtaining approval and permits for the installation of the PCE’s sprinkler system; and

WHEREAS, the applicant further states that it has since obtained approval of the sprinkler system and a permit has been issued; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated August 3, 2010, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy, to expire on February 14, 2013; *on condition*:

THAT a certificate of occupancy shall be obtained by February 14, 2013;

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



# MINUTES

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 320134662)

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 764-56-BZ

APPLICANT – Alfonso Duarte, P.E., for Anthony Panvini, owner.

SUBJECT – Application December 2, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses and the sale of used cars (UG 16B), which expires on October 22, 2012. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, north side between Hollis Ct., Boulevard and 201<sup>st</sup> Street, Block 741, Lot 325,000.00, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for continued hearing.

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## 548-79-BZ

APPLICANT – Bryan Cave LLP, for 249 West 29 Owners Corp.

SUBJECT – Application December 2, 2011 – Amendment of a previously approved variance (§72-21) which permitted residential use (UG2) on floors 3 through 15. Application seeks to legalize residential use on the 2<sup>nd</sup> floor, contrary to use regulations §42-481. M1-6D zoning district.

PREMISES AFFECTED – 247-251 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street, 170’ east of 8<sup>th</sup> Avenue, Block 779, Lot 10, 12, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Margery Perlmutter.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 10 A.M., for decision, hearing closed.

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## 187-10-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER – Ranjit S. Atwal

SUBJECT – Application October 5, 2010 – Dismissal for lack of Prosecution – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard regulations (§23-462(c)). R6B zoning district.

PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Khalid M. Azam

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for dismissal calendar.

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## APPEALS CALENDAR

### 45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application July 20, 2011 – Extension of time to complete construction, which expired on July 10, 2011, in accordance with a previously approved common law vested rights application for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for continued hearing.

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### 15-11-A

APPLICANT – Slater & Beckerman, LLP, for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building’s determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Beckerman and Neil Weisbard.

For Opposition: Amanda Derr.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 27,

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2012, at 10 A.M., for decision, hearing closed.  
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**75-11-A**

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid since permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administrative Code. R4 Zoning District.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Margery Perlmutter.

**ACTION OF THE BOARD** – Off calendar.  
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**119-11-A**

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Margery Perlmutter.

For Opposition: Joan Byrnes.

For Administration: Lisa Errantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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**REGULAR MEETING  
TUESDAY AFTERNOON, FEBRUARY 14, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Montanez.

**ZONING CALENDAR**

**231-10-BZ**

**CEQR #11-BSA-045K**

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school (*Williamsburg Infant and Early Childhood Development center*), contrary to use regulations (§42-11); floor area (§43-122), rear yard (§43-26), and wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

APPEARANCES –

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 18, 2010, acting on Department of Buildings Application No. 320225626 reads, in pertinent part:

Proposed development is contrary to the following sections of the ZR and therefore requires approval from the NYC BSA:

FAR, ZR Section 43-122

Use Group, ZR Section 42-11

Wall Height, ZR Section 43-43

Total Height, ZR Section 43-43

Number of stories, ZR Section 43-43

Rear Yard, ZR Section 43-26

Setback, ZR Section 43-43

Sky Exposure Plane, ZR Section 43-43; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an M1-1 zoning district, the construction of a six-story Use Group 3 school, which does not conform to district use regulations or comply with relevant bulk regulations, contrary to ZR §§ 42-11, 43-122, 43-26, and 43-43; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in *The City Record*, with continued hearings on November 15, 2011 and December 13, 2011, and then to decision on February 14, 2012; and

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

WHEREAS, Community Board 3, Brooklyn, states that it takes no action regarding this application; and

WHEREAS, City Councilmember Stephen T. Levin recommends approval of this application; and

WHEREAS, State Assemblymember Joseph R. Lentol recommends approval of this application; and

WHEREAS, this application is brought on behalf of the Williamsburg Infant and Early Childhood Development Center, Inc. (“WIEDC”), a not-for-profit educational entity; and

WHEREAS, the subject site is located on the south side of Park Avenue, between Kent Avenue and Franklin Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 120 feet of frontage on Park Avenue, a depth of approximately 89’-5”, and a total lot area of approximately 10,730 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a six-story and cellar school building on the site; and

WHEREAS, the proposed use is not permitted in the subject M1-1 zoning district and the proposed bulk exceeds the complying building envelope for a conforming use, thus the applicant seeks a variance for the proposed building; and

WHEREAS, the applicant originally proposed to construct a six-story building with a floor area of 48,621 sq. ft. (4.5 FAR), a wall height of 73’-0”, and a total height of 87’-6”; and

WHEREAS, at the direction of the Board, the applicant revised its proposal and provided interim proposals that maintained the floor area of 48,621 sq. ft. (4.5 FAR) and the wall height of 73’-0”, but reduced the total height to 85’-6” and then 82’-10”, before further revising the plans to reflect the current proposal; and

WHEREAS, the current proposal reflects the following non-compliances: a floor area of 48,621 sq. ft. (25,752 sq. ft. is the maximum permitted); an FAR of 4.5 (2.4 FAR is the maximum permitted); a wall height of 68’-4” (the maximum permitted wall height is 30’-0”); a total height of 80’-0” (as governed by the sky exposure plane); a setback of 15’-0” above the fifth floor (a minimum setback of 20’-0” is required above a height of 30’-0”); a rear yard with a depth of 15’-0” above the first floor (a rear yard with a minimum depth of 20’-0” is required); and encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a therapeutic pool, changing room, large occasion room, kitchen, building services, and storage at the cellar; (2) a drop off area, reception area, lobby, staff daycare room, therapy rooms, classrooms, and offices at the first floor; (3)

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therapy rooms, classrooms, and offices at the second floor; (4) therapy rooms, classrooms, teacher's lounge, rabbi's office, and a children's pantry and bakery at the third floor; (5) therapy rooms, classrooms, a staff lounge, indoor and outdoor play areas, and offices at the fourth floor; (6) therapy rooms, classrooms, a staff lounge, and offices at the fifth floor; (7) service coordination suites, offices, and conference rooms at the sixth floor; and (8) a playground on the roof; and

WHEREAS, the applicant states that the following are the primary programmatic needs of WIEDC: (1) accommodating the current enrollment while allowing for future growth; (2) relieving overcrowded classroom conditions; (3) providing sufficient space for the special needs students and the associated staff and therapy equipment; and

WHEREAS, the applicant represents that the WIEDC has been located at its current facility at 22 Middleton Street since December 2004, and has expanded over that time from a small number of students to the current enrollment of 190 students; and

WHEREAS, the applicant states that the existing building is no longer adequate to accommodate WIEDC's current and projected enrollment; and

WHEREAS, the applicant states that the existing building contains approximately 18,000 sq. ft. of floor area, which is inadequate to provide the space necessary to meet the therapy and education requirements of the special needs students; and

WHEREAS, specifically, the applicant states that WIEDC services students that are at the most extreme end of the disabled spectrum, and providing adequate education and therapy for the students requires significantly more space than is needed for other children; and

WHEREAS, the applicant represents that of the current enrollment of 190 students, only 140 can be accommodated in the existing building, while the additional 50 students are educated off-site; and

WHEREAS, the applicant further represents that the therapy rooms in the existing building are too small to accommodate the specialized equipment needed or the methods used in the therapy sessions, and that many of the offices in the existing building are forced to double as therapy rooms; and

WHEREAS, the applicant states that the existing building lacks space for families of the children to come and meet with the therapists, social workers, and teachers, which is encouraged to occur many times per week, given the students' need for 24-hour attention; and

WHEREAS, the applicant further states that the existing building's recreation areas are also deficient, as the indoor play area lacks space for any therapeutic play equipment, and the outdoor play area is in a courtyard adjacent to residential units, and therefore does not provide sufficient privacy for the students; and

WHEREAS, the applicant states that there is currently a waiting list for the subject school, and WIEDC seeks to increase its enrollment to 272 students for the proposed facility; and

WHEREAS, the proposed building will allow WIEDC to accommodate its current enrollment as well as its

projected enrollment of approximately 272 students through the use of both formal classroom space and separate therapy space to accommodate the varying needs of the students; and

WHEREAS, the applicant states that there are a total of 20 proposed classrooms on floors two through five which are all substantially similar in size, ranging from 549 sq. ft. to 661 sq. ft. to accommodate six to 12 students in each room; and

WHEREAS, the applicant represents that there are six types of classrooms proposed which reflect the six core programs necessary to meet the specific needs of the students, and the standard per square foot measurement used in the classrooms is dependent upon the type of classroom: (1) Early Intervention Classrooms will be located at the first floor for children up to three years old, and will occupy a total of 1,013 sq. ft., at an average of 63 sq. ft. per child; (2) Individual Support Classrooms for children aged two through six will be located at the second and third floors and will occupy a total of 2,217 sq. ft., at an average of 93 sq. ft. per child; (3) Medium Functioning Classrooms for children aged two through six will be located at the second and third floors and will occupy a total of 2,356 sq. ft., at an average of 69 to 92 sq. ft. per child; (4) High Functioning Classrooms for children aged two through six will be located at the second and third floors and will occupy a total of 2,407 sq. ft., at an average of 65 sq. ft. to 67 sq. ft. per child; (5) Individual Support Classrooms for children aged six and above will be located at the fourth and fifth floors and will occupy a total of 2,471 sq. ft., at an average of 75 sq. ft. to 106 sq. ft. per child; and (6) Medium Functioning Classrooms for children aged six and over will be located at the fourth and fifth floors and will occupy a total of 2,386 sq. ft., at an average of 47 sq. ft. to 53 sq. ft. per child; and

WHEREAS, in addition to the classrooms, the applicant states that the first floor will include a speech room and a large therapy room that will accommodate ten students; and

WHEREAS, the applicant further states that there are therapy suites at the second and third floor which will accommodate 30 students, and consist of occupational therapy, speech therapy rooms, a therapist's office, and a sensory integration space all centered around a larger therapy room, which will allow for individual therapy as well as larger group therapy on an as needed basis and simultaneously; and

WHEREAS, the applicant states that there are also large therapy suites on the fourth and fifth floor which are designed exclusively for group therapy sessions; and

WHEREAS, the applicant further states that an 18'-0" by 30'-0" therapeutic pool will be located at the cellar to be utilized in therapy sessions and can accommodate five children at once, including wheelchairs, walkers, and water therapy equipment; and

WHEREAS, in addition to the proposed student enrollment, the applicant states that the programmatic operations of the school require more staff than that of a conventional school, resulting in even more spatial demands upon the proposed facility; and

WHEREAS, specifically, the applicant states that WIEDC has a programmatic need to provide a total of 55 teachers and paraprofessional support staff that comes on an as-needed basis to accommodate the proposed 272 students; and

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WHEREAS, the applicant states that the above-mentioned uses are based on simultaneous student occupancy of all classrooms, therapy rooms, speech rooms, and the pool, and will accommodate the proposed 272 students; and

WHEREAS, the applicant states that the remaining spaces in the proposed building are non-simultaneous uses, including a gym, play areas, speech therapy areas, a day care room, computer rooms, and play grocery store and banking areas, none of which can be readily adapted back and forth to accommodate multiple uses; and

WHEREAS, the applicant represents that a further programmatic need of the school is to provide a first floor drop off area that is off-street and allows for a safe and protected area for student drop-off and pickup to occur, as it can take several minutes for the students to get in or out of a vehicle; and

WHEREAS, the applicant states that the remainder of the first floor includes a reception and waiting area, and a family lounge to address the need for close family involvement; and

WHEREAS, the applicant further states that outdoor play areas will be located at the roof and fourth floor, and these areas will be supervised and enclosed and allow for the difference in the type of play between the older or more functioning students and those that are younger or may require more specialized play; and

WHEREAS, the applicant represents that the requested floor area, height, setback, and rear yard waivers are necessary to accommodate the space needs associated with the projected student body; and

WHEREAS, the applicant represents that the proposed height waiver is necessary to accommodate certain therapeutic equipment on each floor, specifically the sensory integration swing platforms, which are integral aspects to the therapy process and require a floor-to-ceiling height of 10'-6" (not including additional space required for duct space above the ceiling) to provide the necessary clearance for the swing platforms; and

WHEREAS, the applicant further represents that the waivers for height, setback, and encroachment into the sky exposure plane are also necessary to provide uniform floor plates on the second through fifth floors, in order to provide sufficient space to accommodate the students, staff, and specialized therapy equipment required or the school; and

WHEREAS, the Board notes that the applicant could have applied for a special permit for the subject site pursuant to ZR § 73-19 which would authorize the proposed use in the subject M1-1 zoning district, but a variance would still be required to construct the proposed building due to the requested bulk waivers; and

WHEREAS, the applicant submitted evidence in support of its claim that it could satisfy the findings required for the special permit under ZR § 73-19, to allow for a school within an M1-1 zoning district; and

WHEREAS, however, the applicant notes that the special permit would allow for a maximum FAR of 2.4 for the proposed school, which is not sufficient to meet WIEDC's programmatic needs; and

WHEREAS, the applicant submitted plans based on what

would be permitted pursuant to the special permit, which reflect a four-story building with 25,748 sq. ft. of floor area (2.4 FAR), a wall height of 23'-6", a total height of 46'-6", a rear yard with a depth of 20'-0", and a front setback with a depth of 20'-0"; and

WHEREAS, the applicant states that the building permitted pursuant to the special permit would yield sufficient space for only 154 students, which is well below the proposed enrollment of 272 students, and does not even satisfy the current enrollment of 190 students; and

WHEREAS, the applicant submitted a comparison chart reflecting the services which would be lost if the school were constructed pursuant to the special permit, which includes classrooms, therapy rooms, speech rooms, service coordination suites, a food prep room, restroom facilities, offices, the indoor play area, one outdoor play area, a nurse's office, and a reception area, among other spaces; and

WHEREAS, accordingly, the applicant states that only the proposed variance building can accommodate WIEDC's projected enrollment and satisfy the programmatic needs and space requirements of the school's special needs students; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the school, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the school is a not-for-profit organization and the proposal is in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the surrounding area is characterized by a mix of residential, community facility, commercial, and manufacturing uses; and

WHEREAS, as noted above, the proposed use is permitted by special permit under ZR § 73-19, which the applicant states is an acknowledgement that the use itself can be compatible with surrounding uses in the M1-1 zoning district; and

WHEREAS, the applicant notes that the proposed use would also be permitted as-of-right in the MX4/M1-2/R6A zoning district which is located approximately one block to the

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northeast of the site; and

WHEREAS, the applicant states that there are also residential uses located on the subject block, including immediately adjacent to the rear of the site, and to the east of the site on Lots 35, 38, and 39; and

WHEREAS, as to bulk, the applicant states that the proposed height of 80'-0" is contextual with the building located on Lot 39 of the subject block with a height of 60'-0", as well as several other five-story buildings in the surrounding area; and

WHEREAS, the applicant submitted a building height comparison study which reflects that the proposed height is comparable to several other buildings in the vicinity of the site; and

WHEREAS, the Board notes that the building is set back 15'-0" above the fifth floor along Park Avenue, which will reduce the visual impact of the building height when viewed from the street; and

WHEREAS, the applicant states that the size of the proposed building will not have a detrimental impact on surrounding uses, as the adjacent lot to the west is used to store moving vans and the proposed building will provide a 15'-0" rear yard setback above the first floor, which will provide a buffer between the proposed building and the adjacent building to the south, thereby providing access to natural light in the proposed classrooms and minimizing any impact of the proposed building on the adjacent building to the south; and

WHEREAS, the applicant represents that no adverse traffic impacts will result from the proposed legalization and enlargement, as the school will have an off-street pickup and drop-off area for school vans and private vehicles at the first floor of the building; and

WHEREAS, the applicant states that the school has a total of 12 vans which can accommodate 15 students each, and that four vans can park in the drop-off area at a given time; thus, 60 students can arrive in each shift; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development in conformance with zoning would meet the programmatic needs of the school at the site; and

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

WHEREAS, as noted above, the applicant originally proposed to construct a six-story building with a wall height of 73'-0" and a total height of 87'-6"; and

WHEREAS, at the direction of the Board, the applicant revised its proposal and provided interim plans which maintained the wall height of 73'-0" but reduced the total height to 85'-6" and then to 82'-10", before further revising the proposal to reflect the current proposal with a wall height of 68'-4" and a total height of 80'-0"; and

WHEREAS, accordingly, the Board finds the requested

waivers to be the minimum necessary to meet the programmatic needs of the school and to construct a building that is compatible with the character of the neighborhood; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BSA045K, dated February 7, 2012; and

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

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the January 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source and mobile source air quality screening analysis and determined that the proposed project is not anticipated to result in significant air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a window-wall noise attenuation rating of 31 dBA (OITC) and an alternate means of ventilation be provided for the proposed building; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M1-1 zoning district, the construction of a Use Group 3 school, which does not conform with applicable zoning use regulations or comply with relevant

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bulk regulations, contrary to ZR §§ 42-11, 43-122, 43-43, and 43-26, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received February 13, 2012” – Three (3) sheets and “Received February 8, 2012” – Thirteen (13) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: six stories, a floor area of 48,621 sq. ft. (4.5 FAR); a wall height of 68’-4”; a total height of 80’-0”; a front setback of 15’-0” above the fifth floor; a rear yard with a depth of 15’-0” above the first floor; and encroachment into the sky exposure plane, as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT DOB shall not issue a Certificate of Occupancy until the applicant has provided documentation of DEP’s approval of the Remedial Closure Report; and

THAT the proposed project shall include a window/wall attenuation rating of 31 dBA (OITC), an alternate means of ventilation to maintain an interior noise level of 45 dBA, and a closed window condition; and

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

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

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

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

Adopted by the Board of Standards and Appeals, February 14, 2012.

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**73-11-BZ  
CEQR #11-BSA-101R**

APPLICANT – Rampulla Associates Architects, for Tora Development, LLC, owners.

SUBJECT – Application May 26, 2011 – Variance (§72-21) to allow a three-story, 87-unit residential building, contrary to use regulations of (§32-11), height (§23-631) and parking (§25-23) regulations. C3A/SRD zoning district.

PREMISES AFFECTED – 70 Tennyson Drive, north side Tennyson Drive, between Nelson Avenue and Cleveland Avenue, Block 5212, Lot 70, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Philip Rampulla.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated November 10, 2011, acting on Department of Buildings Application No. 520060246, reads in pertinent part:

Proposed three (3) story eighty seven (87) unit residential building contrary to use regulations (Section ZR 32-11)

Height (Section ZR 23-631) and parking (Section ZR 25-23) in C3A zoning district is contrary to (Section 34-01); and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C3A zoning district within the Special South Richmond Development District (“SSRDD”) in a Lower Density Growth Management Area (“LDGMA”), a three-story residential building (UG 2), with 87 dwelling units and 114 accessory parking spaces, which is contrary to ZR §§ 32-11 and 34-01; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in the *City Record*, with a continued hearing on December 6, 2011, and then to decision on January 24, 2012; and

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

WHEREAS, Community Board 2, Staten Island, recommended disapproval of the original iteration of this application, citing concerns with the size and bulk of the project as originally proposed, its effect on the surrounding neighborhood character, and that the site does not suffer from unique physical conditions; and

WHEREAS, City Council Member Vincent M. Ignizio recommended disapproval of the original iteration of this application; and

WHEREAS, Staten Island Borough President James P. Molinaro recommends approval of the current application, with the following conditions: (1) all portions of Tennyson Drive be developed to the full mapped width of the street, with sidewalks and planting strips provided; (2) public dedication areas should include all land within the mapped bed of Tennyson Drive; (3) a Declaration of Public Use be filed with the Builder’s Pavement Plan application, guaranteeing pedestrian and vehicle access to all portions of the public dedication areas at all times; and (4) the Department of Transportation (“DOT”) render an opinion regarding parking and lighting considerations proximate to existing intersections; and

WHEREAS, a member of the community provided oral testimony in opposition to this application; and

WHEREAS, the subject premises is an irregular-shaped lot located on the north side of the mapped but unbuilt Tennyson Drive, between Nelson Avenue and Cleveland Avenue, in a C3A zoning district within the SSRDD and in a LDGMA; and

WHEREAS, the site is also located adjacent to the northwest of Seaside Wildlife Nature Park, which opened in 2009 and consists of 21 acres along the Great Kills Harbor

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waterfront; and

WHEREAS, the site has approximately 468 feet of frontage along Nelson Avenue, 723 feet of frontage along the mapped but unbuilt Tennyson Drive, 101 feet of frontage along Cleveland Avenue, 456 feet of frontage along Fitzgerald Avenue, and 45 feet of frontage along Morris Place, with a total lot area of 177,791 sq. ft.; and

WHEREAS, the applicant notes that a 57,103 sq. ft. portion of the subject lot is located in the bed of an unbuilt portion of Tennyson Drive; as a result the buildable area for the subject lot is reduced to 120,681 sq. ft. because as-of-right development is limited to the area outside the bed of the mapped but unbuilt Tennyson Drive; and

WHEREAS, on September 28, 1999, under BSA Cal. No. 60-99-A, the Board granted an application for the site to permit construction of a two-story, 100 unit residential building and restaurant which complied with the underlying zoning requirements but required a waiver of General City Law § 35 for construction partially in the bed of a mapped street, Tennyson Drive; and

WHEREAS, on September 1, 2005, the Board issued a letter of substantial compliance permitting an amendment to the approval from a two-story building to a three-story building, with a reduction in the portion of the building being constructed in the bed of the mapped street; and

WHEREAS, the applicant notes that on July 27, 2005, the subject site was rezoned from a C3 zoning district (with an R3-2 residential equivalent) to a C3A zoning district (with an R3A residential equivalent), in which the previously-approved residential development is not permitted as-of-right; and

WHEREAS, the applicant states that the subject site remains vacant; and

WHEREAS, the applicant initially proposed a four-story, 100-unit residential building (UG 2) with accessory parking for 100 vehicles, a floor area of 114,777 sq. ft. (0.645 FAR), a street wall height of 48'-0", a total building height of 58'-0", and which would not have opened the portion of Tennyson Drive located within the subject zoning lot and connected it to the existing street grid; and

WHEREAS, during the hearing process, the building height, floor area and number of units were reduced and the number of parking spaces increased at the direction of the Board and in response to concerns raised by the Community Board, Borough President, City Council and members of the community; and

WHEREAS, the applicant also revised its proposal to build out the portion of Tennyson Drive located within the zoning lot to its full mapped width and connect it to the existing street grid; thus, the current proposal does not contemplate construction in the bed of the mapped street and therefore will comply with General City Law § 35; and

WHEREAS, the applicant now proposes a three-story, 87-unit residential building with accessory parking for 114 vehicles, a floor area of 106,311 sq. ft. (0.597 FAR), and a height of 38'-2"; and

WHEREAS, the applicant states that the owner proposes to limit the occupancy of the building to adults age 55 and over; and

WHEREAS, the applicant further states that the proposed building will comply with the Housing for Older Persons Act ("HOPA"), a federal program that allows for such older adult housing projects; and

WHEREAS, the applicant states that the subject C3A zoning district limits Use Group 2 residential development to detached single- and two-family homes; therefore a use variance is requested for the proposed building; and

WHEREAS, the applicant further states that, pursuant to ZR § 34-01, the subject C3A zoning district has an R3A residential equivalent such that R3A district bulk provisions govern the subject site, and the proposed building therefore has the following non-compliances: a height of 38'-2" (a maximum height of 35'-0" is permitted); and 114 accessory parking spaces (a minimum of 131 accessory parking spaces are required); and

WHEREAS, because the proposed building does not conform to the use provisions of the C3A zoning district and does not comply with the bulk provisions related to street wall height and required parking, the applicant requests a variance to permit the proposed building; and

WHEREAS, the applicant states that the following unique physical conditions create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the presence of a mapped but unbuilt street on the subject lot; (2) poor subsurface soil conditions; (3) the lack of sanitary sewers; and (4) the irregular shape of the lot; and

WHEREAS, as to the mapped but unbuilt street, the applicant states that 57,103 sq. ft. of the subject lot is located in the bed of the unbuilt Tennyson Drive; therefore, approximately 32 percent of the 177,791 sq. ft. lot is within the bed of Tennyson Drive and cannot be developed; and

WHEREAS, the applicant represents that, although the 57,103 sq. ft. of lot area located in the bed of Tennyson Drive cannot be built upon, the Department of Buildings ("DOB") allows the portion of a zoning lot located in a mapped but unbuilt street to be included as lot area, such that the permitted floor area is calculated based on the total lot area of 177,791 sq. ft.; and

WHEREAS, however, the applicant states that the required yards and setbacks must be taken outside of the mapped but unbuilt street, and therefore the location of the street inhibits the ability of the site to realize its full development potential; and

WHEREAS, specifically, the applicant states that an as-of-right residential development on the site is limited to 24 two-family, three-story detached homes, which is unable to utilize the floor area generated by the portion of the lot located within the bed of Tennyson Drive; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a 400-ft. radius diagram which reflects that the subject site is the only zoning lot in the surrounding area which contains a mapped but unbuilt street; and

WHEREAS, as to the subsurface conditions on the site, the applicant states that the site has poor underlying soil conditions and is located within three different flood zones, all of which preclude the use of conventional foundation systems;



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and

WHEREAS, the applicant submitted an engineer's report which stated that, based on soil borings performed at the site, the existing soil strata comprises a layer of fill which varies in thickness from three feet to 16.5 feet, followed by a layer of inorganic clayey silts with thickness varying from three feet to nine feet, followed by a layer of organic clayey silts with a thickness of four feet, and finally a layer of sand to the depth of 47 feet; and

WHEREAS, the engineer's report further states that the site has a high water table, ranging from five feet to nine feet below grade; and

WHEREAS, the applicant states that the site is located within three flood zones: (1) Zone AE affects 70 percent of the proposed development area and represents a special flood hazard area that is subject to 100-year flood in any given year, and has a base flood elevation of 11 feet, which is five feet above the mean site elevation; (2) Zone X affects 29 percent of the proposed development area and represents a 0.2 percent annual chance of flood; and (3) Zone VE affects approximately one percent of the proposed development area, and represents a coastal flood zone with wave action hazard and has a base flood elevation of 12 feet; and

WHEREAS, the applicant states that, due to the location of the subject zoning lot within three flood zones, certain regulatory requirements apply to any development on the site, based on Federal Emergency Management Agency ("FEMA") site classifications; and

WHEREAS, specifically, the applicant states that 71 percent of the site is occupied by flood zones which require that foundations be designed, constructed, and anchored to prevent flotation, collapse and lateral movement, and which either prohibit or recommend against the use of structural fill or solid concrete foundations; and

WHEREAS, the applicant states that the FEMA regulations for the flood zones in which the site is located, in conjunction with the high water table and poor underlying soil conditions which have the potential for foundation settlement, make conventional foundation systems of reinforced concrete spread footings inappropriate; and

WHEREAS, specifically, the engineer's report states that the foundation system for any development on the site would consist of timber piles driven approximately 30 feet below grade; and

WHEREAS, the engineer's report further states that future sewer lines for both the as-of-right and proposed development would be supported on a timber pile system in order to eliminate potential sewer line damage risks due to soil erosion, soil settlement, flooding, and the high water table; and

WHEREAS, the applicant states that this approach would greatly increase the number of piles for the as-of-right development (consisting of 24 two-family three-story homes), due to the required network of mains and laterals, while the proposed condominium building would require significantly fewer piles since only one line would be used to connect the sewer main; and

WHEREAS, specifically, the applicant states that the as-of-right two-family residential development would require a

total of 696 piles at a cost of \$688,674, as compared to a total of 444 piles at a cost of \$444,486 for the proposed condominium building, a difference of \$244,188; and

WHEREAS, as to the uniqueness of these conditions, the applicant states that the majority of other zoning lots in the surrounding area do not suffer from these conditions, and DOB records indicate that semi-detached and attached houses located to the northwest of the site have acceptable soil conditions for conventional concrete foundations; and

WHEREAS, the applicant states that the lack of sanitary sewers at the subject site is another unique condition which makes as-of-right development of the site infeasible; and

WHEREAS, the applicant states that the subject site has frontage on Nelson Avenue, Cleveland Avenue, Fitzgerald Avenue, Morris Place, and Tennyson Drive, and that while there are interceptor sewers located in Nelson Avenue and Tennyson Drive, individual house sewers are not permitted to connect to an interceptor sewer; and

WHEREAS, the applicant further states that the only sanitary sewer available for connection is a ten-inch sanitary sewer located in Cleveland Avenue, and this condition necessitates the installation of a common internal sanitary sewer which increases the costs for any as-of-right residential development; and

WHEREAS, the applicant represents that the lack of sanitary sewers, which precludes individual house connections and forces the use of a common internal sanitary sewer, is a unique condition which is not shared by any other lot in the surrounding area; and

WHEREAS, as to the irregular shape of the site, the applicant states that the subject site has frontage on five separate streets yet is triangular in appearance; and

WHEREAS, the applicant further states that a large portion of the site's Tennyson Drive frontage is curved, which increases the irregularity of the lot; and

WHEREAS, the applicant represents that the irregular shape of the lot significantly impedes the development potential of the site; and

WHEREAS, specifically, the applicant states that despite the frontage on five separate streets, as-of-right development consisting of 24 two-family three-story homes would require the construction of a new private street, in order to provide access to certain homes located on the interior portion of the lot, which would further reduce the development potential of the site; and

WHEREAS, the applicant submitted as-of-right plans reflecting that the shallowness of the northeastern portion of the site further inhibits the as-of-right development potential of the site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) an as-of-right development with 24 detached, two-family, three-story homes with built-in garage; and (2) the originally proposed four-story

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100 unit condominium building with a floor area of 114,777 sq. ft. (0.645 FAR) and 100 accessory parking spaces; and

WHEREAS, the feasibility study concluded that the as-of-right development would not realize a reasonable return, but that the proposed development would realize a reasonable return; and

WHEREAS, during the course of the hearing process, the Board directed the applicant to revise the proposed scenario and analyze a lesser variance scenario which complied with all bulk regulations of the Zoning Resolution; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed the current three-story 87 unit condominium building with a floor area of 106,311 sq. ft. (0.597 FAR) and 114 accessory parking spaces, and provided a lesser variance scenario consisting of 36 non-conforming attached three-story single-family townhouses which complied with all bulk regulations of the R3A residential equivalent zoning district; and

WHEREAS, the revised feasibility study concluded that the lesser variance scenario would not realize a reasonable return but that the revised proposed scenario would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant initially provided a 400-foot radius diagram indicating that the surrounding area is characterized by a mix of residential and commercial development; and

WHEREAS, the radius diagram submitted by the applicant reflects that a 90-unit townhouse development is located directly southwest of the site across Nelson Avenue, the 60-unit three- and four-story age-restricted Port Regalle condominium building is located directly south of the site on the opposite side of Tennyson Drive, and a mix of townhouses and semi-detached homes are located to the northwest of the site; and

WHEREAS, the applicant states that the proposed height of 38'-2" exceeds the maximum permitted height of 35'-0" by only 3'-2", and that when measured from the final grade rather than the base plane, the height is only 35'-11"; and

WHEREAS, the applicant submitted a height study diagram reflecting that the height of the proposed building is less than that of the Port Regalle residential development located to the south of the site across Tennyson Drive, which has a maximum height of 42'-0"; and

WHEREAS, the applicant states that the Seaside Wildlife Nature Park is located immediately adjacent to the southeast of the site and the proposed building is setback 45 feet to 60 feet from the Fitzgerald Avenue frontage to the northwest of the

site, which will ensure that the bulk of the proposed building does not negatively impact the surrounding uses; and

WHEREAS, the applicant also submitted a street parking diagram which indicates that the portions of both Tennyson Drive and Nelson Avenue located within the subject site will be opened and improved to their full width; and

WHEREAS, the applicant states that a total of approximately 63 new on-street parking spaces will be created on both sides of Tennyson Drive, and approximately 18 new on-street parking spaces will be provided on the northeast side of Nelson Avenue; and

WHEREAS, the applicant further states that the 100 accessory off-street parking spaces proposed for the subject building, in combination with the approximately 81 new on-street parking spaces that will be created on Tennyson Drive and Nelson Avenue, provide sufficient parking for the project and ensure that the proposed building will not have a negative impact on parking in the surrounding neighborhood; and

WHEREAS, the applicant represents that opening Tennyson Drive to its full width and connecting it to the existing street grid will also improve traffic conditions in the surrounding area; and

WHEREAS, the applicant further represents that restricting the occupancy of the proposed building to persons aged 55 or older will minimize the traffic generated from the site because fewer residents of the proposed building will have automobiles than if the occupancy of the building was not age-restricted; and

WHEREAS, in response to the concerns raised by the Borough President, the applicant states that it has agreed to build out the portion of Tennyson Drive located within the subject zoning lot to the full mapped street width, provide sidewalks and planting strips along Tennyson Drive, include all land within the mapped bed of Tennyson Drive as public dedication areas, and file a Declaration of Public Use with the Office of the County Clerk under the Builder's Pavement Plan application to guarantee pedestrian and vehicle access to all portions of the public dedication areas at all times; and

WHEREAS, the applicant notes that in its letter recommending approval of the subject proposal, the Borough President stated that opening Tennyson Drive to its full mapped width will better serve the community's needs for a contiguous roadway, and the new roadway and attendant sidewalks will provide ample curbside parking spaces and pedestrian connections to the adjacent Seaside Wildlife Nature Park; and

WHEREAS, the applicant notes that the subject C3A zoning district contemplates certain types of residential use, and the proposed building complies with all bulk requirements of the R3A equivalent district, aside from height and parking; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's use, height, bulk and design are compatible with that of other buildings in the neighborhood; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent

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properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship was not created by the owner or a predecessor in title, but is due to the unique conditions of the subject site; and

WHEREAS, as noted above, the applicant initially proposed a four-story 100-unit building with a floor area of 114,777 sq. ft. (0.645 FAR), a street wall height of 48'-0", a total height of 58'-0", and 100 accessory parking spaces; and

WHEREAS, in response to concerns raised by the Borough President, City Council, and members of the community, and at the request of the Board, the applicant revised its proposal during the hearing process by reducing the number of stories from four to three, reducing the height of the building to 38'-2", reducing the number of units from 100 to 87, reducing the floor area from 114,777 sq. ft. (0.645 FAR) to 106,311 sq. ft. (0.597 FAR), increasing the number of parking spaces from 100 to 114, and agreeing to open Tennyson Drive and provide an additional 81 on-street parking spaces along Tennyson Drive and Nelson Avenue; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 11BSA101R, dated February 13, 2012; and

WHEREAS, the New York State Department of Environmental Conservation ("DEC") is reviewing an application for a tidal wetland adjacent area permit for the proposed development; and

WHEREAS, as a condition of approving the permit, DEC may require measures including but not limited to pervious sidewalks and parking areas, planting of native trees and shrubs, and storm water management with hydrodynamic separators; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") reviewed the project for potential archaeological impacts and requested that an archaeological documentary study (Phase IA) be submitted for review and approval; and

WHEREAS, a Restrictive Declaration for an archaeological study was executed on January 18, 2012 and filed for recording on January 19, 2012; and

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

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

environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in a C3A zoning district within the Special South Richmond Development District ("SSRDD") in a Lower Density Growth Management Area ("LDGMA"), a three-story residential building (UG 2), with 87 dwelling units and 114 accessory parking spaces, which is contrary to ZR §§ 32-11 and 34-01, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 10, 2012" – Nine (9) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: three stories; 87 units; a floor area of 106,311 sq. ft. (0.597 FAR); a height of 38'-2"; and accessory parking for 114 vehicles, as illustrated on the BSA-approved plans;

THAT the occupancy of the building shall be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements;

THAT all other Housing for Older Persons Act requirements shall be complied with for the life of the proposed building;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

THAT a Declaration of Public Use guaranteeing pedestrian and vehicle access to all portions of the mapped bed of Tennyson Drive shall be filed with the Office of the County Clerk under the Builder's Pavement Plan;

THAT administrative certifications shall be obtained from the City Planning Commission as required by ZR §§107-64 (removal of trees), 107-65 (modification of topography) and 107-23 (school seats) prior to the issuance of a building permit;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the DEC has issued a tidal wetland adjacent area permit;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction;

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

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23;

THAT this approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

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

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 115-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thomas Schick, owner.

SUBJECT – Application August 15, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1110 East 22<sup>nd</sup> Street, between Avenue J and Avenue K, Block 7603, Lot 62, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Lyra J. Altman.

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 14, 2011, acting on Department of Buildings Application No. 320311998, reads in pertinent part:

Proposed floor area is contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-141.

Proposed side yard is contrary to ZR 23-461(a).

Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, with continued hearings on December 6, 2011 and January 24, 2012 and then to decision on February 14, 2012; and

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

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

WHEREAS, the subject site is located on the west side of East 22<sup>nd</sup> Street, between Avenue K and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 3,855 sq. ft. (0.77 FAR); and

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

WHEREAS, the applicant states that while the portion of the home that protrudes into the rear yard appears to be part of the original building, it is requesting a legalization for that portion of the home because the outline of the existing home does not match the historical Sanborn Maps; and

WHEREAS, the applicant seeks an increase in the floor area from 3,855 sq. ft. (0.77 FAR) to 3,974 sq. ft. (0.80 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 77 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3'-3½" and to maintain the existing side yard along the southern lot line with a width of 8'-5" (two side yards with minimum widths of 5'-0" and a combined width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing, the Board directed the applicant to clarify which portions of the home are being legalized and to identify those portions as new construction; and

WHEREAS, in response, the applicant submitted revised plans identifying that only the portion of the home which is not shown on the historical Sanborn Maps (consisting of the existing protrusion into the rear yard) is being legalized; and

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

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

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Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 31, 2012"-(12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,974 sq. ft. (0.80 FAR); a minimum open space ratio of 77 percent; a side yard with a minimum width of 3'-3½" along the northern lot line; a side yard with a minimum width of 8'-5" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 121-11-BZ

### CEQR #12-BSA-014M

APPLICANT – The Law Office of Fredrick A. Becker, for Convent Avenue Baptist Church, owners.

SUBJECT – Application August 22, 2011 – Variance to legalize a two story and basement rear yard enlargement to a church (*Convent Avenue Baptist Church*), contrary to permitted rear yard regulations (§24-33), and lot coverage (§24-11). R7-2 zoning district.

PREMISES AFFECTED – 351 Convent Avenue, aka 420 West 145<sup>th</sup> Street and 418 West 145<sup>th</sup> Street, southeast corner of Convent Avenue and West 145<sup>th</sup> Street, Block 2050, Lot 42 & 47, Borough of Manhattan.

### COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Fredrick A. Becker and William Nance.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 18, 2011, acting on Department of Buildings Application No. 120649735, reads:

1. Proposed lot coverage exceeds the permitted by section. (ZR 24-11, ZR 24-17)
2. Proposed two-story portion exceeding 23'-0" in height on lot portion beyond 100'-0" of corner that coincides with a rear lot line of an adjoining zoning lot violated 30'-0" rear yard requirement of ZR 24-361 and is not permitted obstruction pursuant to ZR 24-33; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R7-2 zoning district within the Hamilton Heights/Sugar Hill Historic District, the legalization of an enlargement to a church building (Use Group 4), which does not comply with lot coverage and rear yard regulations, contrary to ZR §§ 24-11, 24-17, 24-33, and 24-361; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 14, 2012, and then to decision on February 14, 2012; and

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

WHEREAS, Community Board 9, Manhattan, recommends approval of the application; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about there being excessive noise associated with the musical program during certain periods; and

WHEREAS, this application is brought on behalf of the Convent Avenue Baptist Church, a non-profit religious entity (the "Congregation"); and

WHEREAS, the subject site is located on the southwest corner of Convent Avenue and West 145<sup>th</sup> Street, within an R7-2 zoning district within the Hamilton Heights/Sugar Hill Historic District; and

WHEREAS, the site has 99'-11" of frontage on Convent Avenue, 133'-6" of frontage on West 145<sup>th</sup> Street, and a total lot area of approximately 13,338 sq. ft.; and

WHEREAS, the site is currently occupied by a historic church and an adjacent former townhouse used in conjunction with the church; Tax Lot 42 is occupied by the church and Tax Lot 47 is occupied by the townhouse; together, the buildings have a floor area of 20,617 sq. ft.

WHEREAS, the Congregation has occupied the site since 1942; first it occupied the historic church building (Lot 42) and then it acquired the adjacent townhouse (Lot 47); and

WHEREAS, the applicant states that in the early 1970s, the Congregation acquired a third building (at Convent Avenue

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and West 144<sup>th</sup> Street) to accommodate its education program (the "Education Building"); it is on a separate zoning lot and is not part of the subject application; and

WHEREAS, the Education Building, however, allowed for the ADA accessibility to the sanctuary with the construction of a connection between the Education Building and the sanctuary; prior to that time, the sanctuary was not ADA accessible as it is located many steps above the sidewalk with a grand entrance on Convent Avenue at the second story level as viewed from West 145<sup>th</sup> Street which has a significant slope in an easterly direction from Convent Avenue; and

WHEREAS, the applicant states that it built a connection between the Education Building and the sanctuary building to provide accessibility to the sanctuary building to all congregants; and

WHEREAS, the applicant states that if the enlargement had a maximum height of 23 feet and were one story, it would be a permitted obstruction and not result in lot coverage or rear yard non-compliance; and

WHEREAS, however, the enlargement, completed in the mid-1980s, was built to two stories and a height of 26'-10" and, therefore violates lot coverage and rear yard regulations; and

WHEREAS, the applicant now seeks to legalize the non-complying rear enlargement; and

WHEREAS, the applicant notes that the Congregation also proposes to construct a separate 1,921 sq. ft. elevator and stair addition to the south of the church building along Convent Avenue, which will provide preferable ADA access to the sanctuary; and

WHEREAS, the applicant states that the proposed elevator and stair addition is permitted as-of-right, and the subject application is only necessary to legalize the existing non-complying rear enlargement; and

WHEREAS, the applicant states that the second story of the enlargement, which exceeds the area which would allow it to be a permitted obstruction, is occupied by the prayer room/multi-function room, which is needed to accommodate the Congregation's programmatic needs; and

WHEREAS, specifically, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variance: (1) to have a small space for prayer, choir practice, or Bible study so that it could be accommodated somewhere other than the sanctuary or the basement, which are not intended for everyday activities and are not conducive to small groups or limited activities and (2) to build the prayer room/multi-function room in the same footprint as the first floor of the rear enlargement which is occupied by two deacon's rooms; and

WHEREAS, the applicant states that activities such as prayer groups, choir practice and Bible study are all uses which are traditionally found in connection with a religious facility, and the Congregation has a programmatic need to provide space for such activities; and

WHEREAS, the applicant represents that the Congregation's programmatic needs could not have been accommodated elsewhere in the existing buildings and that the rear enlargement provides the necessary deacon's rooms, and

prayer room/multi-function room, while also serving as a connection between the Education Building and the sanctuary building; and

WHEREAS, the applicant states that there is no other viable location for the prayer room/multi-function room in the church buildings, as aside from the sanctuary and the kitchen and dining space in the basement, the only other rooms consist of an administrative office, the Pastor's office, and the Pastor's conference room, none of which can accommodate prayer groups, choir practice, Bible study, and the other activities that take place in the prayer room/multi-function room; and

WHEREAS, the applicant further states that the sanctuary has a specific use and is not intended for every day activity, and therefore is also incompatible for the services that take place in the prayer room/multi-function room; and

WHEREAS, the applicant states that the Congregation also had a programmatic need to connect the Education Building to the sanctuary, so as to provide access to the sanctuary for the entire Congregation, and to provide space for the deacon's rooms, which was accomplished through the construction of the basement and first-story portion of the subject addition which houses the two deacon's rooms and provides a connection between the Education Building and the sanctuary; and

WHEREAS, the applicant represents that, although the basement and first story of the subject addition would have been permitted as-of-right, construction of the second floor satisfied the Congregation's additional programmatic need of providing the prayer room/multi-function room space as efficiently as possible, by constructing it simultaneously with and on the same footprint as the two deacon's rooms; and

WHEREAS, the applicant states that the requested waivers enable the Congregation to legalize the rear yard addition and maintain the religious uses accommodated on the second floor; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board notes that the applicant provided evidence of the Congregation's status as a non-profit religious institution; and

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

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WHEREAS, the applicant need not address ZR § 72-21(b) since the Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the enlargement does not alter the essential character of the neighborhood, does not substantially impair the appropriate use or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the surrounding area is characterized by a mix of residential and community facility uses; and

WHEREAS, the applicant states that that the proposed/existing use and floor area are permitted as-of-right in the subject zoning district and only the lot coverage and rear yard encroachment generated by the rear enlargement are contrary to zoning district regulations; and

WHEREAS, as noted above, the applicant states that if the enlargement had a maximum height of 23 feet and were one story, it would be a permitted obstruction and not result in lot coverage non-compliance; and

WHEREAS, however, because the enlargement was built to two stories and a height of 26'-10", it violates lot coverage and rear yard regulations; and

WHEREAS, the radius diagram submitted by the applicant reflects that the subject block is predominated by buildings that are four stories or greater, and therefore the 26'-10" height of the subject rear enlargement is lower than that of all of the surrounding buildings; and

WHEREAS, the applicant states that the rear enlargement is separated from adjacent buildings due to its location at the rear of the church building and in between the church building and the Education Building; and

WHEREAS, the applicant notes that the subject rear enlargement has been in existence at the site for approximately three decades; and

WHEREAS, the Board notes that the subject enlargement is currently only minimally visible from the Convent Avenue frontage, and after construction of the zoning compliant elevator and stair addition the rear enlargement will not be visible from any street; and

WHEREAS, at hearing, the Board directed the applicant to respond to the community members concerns regarding excessive noise from the Congregation's music program; and

WHEREAS, in response, the applicant states that it had discussions with the affected community members and has agreed to keep all windows in the second floor prayer room/multi-function room closed during choir practice; and

WHEREAS, the applicant also submitted a letter from a consultant stating that it conducted noise monitoring at the site while choir practice was ongoing, which concluded that with a closed-window condition during choir practice and with choir practice ending by 10:00 p.m., there would be no adverse effect and the noise would not exceed City noise guidelines in the surrounding residences; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission ("LPC") approving work associated with the rear enlargement at the time of its construction, dated March 2, 1989; and

WHEREAS, the applicant also submitted a Certificate of Appropriateness from LPC approving work associated with the proposed elevator and stair addition, dated December 15, 2011; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

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

WHEREAS, the Board notes that the building complies with all bulk and use regulations, with the exception of the height and lot coverage of the rear enlargement; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Congregation the relief needed both to meet its programmatic needs and to occupy a building that is compatible with the character of the neighborhood; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 (a) and 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) 12BSA014M, dated February 9, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review

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and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R7-2 zoning district within the Hamilton Heights/Sugar Hill Historic District, the legalization of an enlargement to a church building (Use Group 4), which does not comply with lot coverage and rear yard regulations, contrary to ZR §§ 24-11, 24-17, 24-33, and 24-361, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 20, 2012"—Eight (8) sheets and "Received February 13, 2012"—One (1) sheet; and *on further condition*:

THAT the rear enlargement which connects the sanctuary and the Education Building will be limited to two stories and a maximum height of 26'-10", as reflected on the approved plans;

THAT any change in control or ownership of the building requires the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT the windows in the second floor prayer room/multi-function room must remain closed at all times during choir practice and other musical activities;

THAT there will be no choir practice or other musical activities after 10:00 p.m.;

THAT the above conditions will be listed on the certificate of occupancy;

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

THAT the approved plans will 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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 14, 2012.

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## 31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 20,

2012, at 1:30 P.M., for deferred decision.

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## 87-11-BZ

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

SUBJECT – Application June 21, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)). R3-1 zoning district.

PREMISES AFFECTED – 159 Exeter Street, between Hampton Street and Oriental Boulevard, Block 8737, Lot 26, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: David B

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4  
Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for decision, hearing closed.

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## 96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6<sup>th</sup> Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of east 6<sup>th</sup> Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 1:30 P.M., for continued hearing.

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## 120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1) in a new commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29<sup>th</sup> Street, corner of 29<sup>th</sup> Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

**ACTION OF THE BOARD** – Laid over to February 28, 2012, at 1:30 P.M., for adjourned hearing.

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# MINUTES

## 130-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Gutman and Arthur Gutman, owners.

SUBJECT – Application September 2, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3600 Bedford Avenue, between Avenue N and Avenue O, Block 7678, Lot 90, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for decision, hearing closed.

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## 159-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; JWSTKD II, lessee.

SUBJECT – Application October 21, 2011 – Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment (*Hi Performance Tai Kwon Do*). C4-1 zoning district.

PREMISES AFFECTED – 212-01 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue between Bell Boulevard and Corporal Kennedy Street, Block 5900, Lot 2, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for decision, hearing closed.

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## 176-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Lubimor, owner.

SUBJECT – Application November 14, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 1:30 P.M., for continued hearing.

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## 179-11-BZ

APPLICANT – Herrick, Feinstein LLP, for Ridgedale Realty Company, LLC, owner; Kings of Queens Retro/Retro Fitness of Glendale, lessee.

SUBJECT – Application November 30, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*New Retro Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 65-45 Otto Road, between 66<sup>th</sup> Street and 66<sup>th</sup> Place. Block 3667, Lot 625. Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Jennifer Dickson and Daniel Henkel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for decision, hearing closed.

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## 184-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Esther Snyder and Robert Snyder, owner.

SUBJECT – Application December 5, 2011 – Special Permit §73-622 for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 945 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street between Avenue T and J, Block 7587, Lot 26, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.4

Negative:.....0

Absent: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to March 6, 2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# MINUTES

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## \*CORRECTION

This resolution adopted on November 17, 2009, under Calendar No. 395-60-BZ and printed in Volume 94, Bulletin No. 46, is hereby corrected to read as follows:

### **395-60-BZ**

**APPLICANT** – Sheldon Lobel, P.C., for Ali A. Swati, owner.

**SUBJECT** – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district.

**PREMISES AFFECTED** – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

### **COMMUNITY BOARD #5BK**

#### **APPEARANCES** –

For Applicant: Elizabeth Safian.

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

#### **THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### **THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure; an extension of term, which expired on December 9, 2005; an extension of time to obtain a certificate of occupancy, which expired on January 19, 2000; an amendment to allow for the subdivision of the lot; and an amendment to allow changes in use within Use Group 16 and from Use Group 16 to Use Group 6 on a portion of the site; and

WHEREAS, a public hearing was held on this application on November 25, 2008 after due notice by publication in *The City Record*, with continued hearings on January 13, 2009, February 10, 2009, April 21, 2009, June 23, 2009, August 11, 2009, and September 22, 2009, and then to decision on November 17, 2009; and

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

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

WHEREAS, the site is located on the northwest corner of Linden Boulevard and Euclid Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1960, when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with

accessory uses for a term of 15 years; and

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

WHEREAS, the grant was most recently extended on January 19, 1999 for a term of ten years from the expiration of the prior grant, to expire on December 9, 2005; the grant also allowed for the legalization of an enlargement of the accessory building for use as a convenience store; and

WHEREAS, the applicant represents that an extension of term and a certificate of occupancy were not obtained in a timely manner due to administrative oversight; and

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

WHEREAS, the applicant seeks an amendment to (1) subdivide the lot, (2) permit a change in use from a gasoline service station (Use Group 16) to automotive repair establishment (Use Group 16) and (3) permit a change in use from accessory Use Group 16 to Use Group 6 for the existing convenience store; and

WHEREAS, with regard to the subdivision of the lot, the applicant submitted (1) site plans, which reflect the proposed configuration of the subject site and the adjacent lots; and (2) proof of ownership of the lots; and

WHEREAS, based on its review of the lot configuration, use of the site, and visual inspection of the site, the Board does not find that such a change, which would result in a substandard, irregularly-shaped lot is appropriate; and

WHEREAS, at hearing, the Board stated that it would not consider any of the proposed amendments or requested extensions until the applicant had demonstrated good faith efforts to remedy the poor site conditions; and

WHEREAS, specifically, the Board directed the applicant to improve the conditions of the site, including (1) remove the portion of the one-story frame enlargement to the existing building, which is not reflected on the BSA-approved plans; (2) improve site conditions, which includes the removal of graffiti, any signs not approved by the Board, and debris; (3) repair and install new fencing; and (4) re-pave the parking lot; and

WHEREAS, in response, the applicant submitted (1) evidence that the property owner has engaged an architect and applied for permits to demolish the existing enlargement to the building, which is contrary to the prior Board approvals; (2) photographs of the site, which reflect the removal of graffiti, the non-complying billboard, and debris; and (3) photographs of improved fence conditions; and

WHEREAS, the applicant also submitted a letter from the project architect stating that the removal of the one-story frame enlargement to the western side of the building would not compromise the structure of the remaining building; and

WHEREAS, the applicant proposes to re-pave the parking lot; and

WHEREAS, the Board accepts the submitted evidence as verification that the applicant is pursuing the required site improvements in good faith; and

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WHEREAS, with regard to the proposed change in use from a gasoline station to an automotive repair establishment, the Board has determined that the change in use from one Use Group 16 use to another Use Group 16 use is appropriate; and

WHEREAS, the Board notes that the applicant must comply with all Department of Environmental Protection requirements associated with the termination of the gasoline service station use at the site; and

WHEREAS, with regard to the applicant's request to change the designation of the existing convenience store from an accessory Use Group 16 use to a Use Group 6 use, the Board has determined that this is appropriate; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use which would be permitted under ZR § 52-31; and

WHEREAS, based upon the above, the Board denies the applicant's request to subdivide the lot, but finds that the other requested amendments are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 1, 1960, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 9, 2005, to expire on December 9, 2015; to grant an extension of time to obtain a certificate of occupancy to May 17, 2010, and to permit the noted use changes and site modifications; *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of the grant shall expire on December 9, 2015;

THAT a certificate of occupancy shall be obtained by May 17, 2010;

THAT Department of Environmental Protection approval shall be obtained for any work associated with the termination of the gasoline service station use at the site;

THAT the site shall be maintained free of debris;

THAT all graffiti shall be removed within 48 hours;

THAT all signage shall comply with C1 zoning district sign regulations;

THAT all fencing shall be maintained in good condition;

THAT the parking lot shall be paved and maintained in good condition;

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

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

(DOB Application No. 302265536)

Adopted by the Board of Standards and Appeals, November 17, 2009.

"302265536". Corrected in Bulletin No. 8, Vol. 97, dated February 22, 2012.

**\*The resolution has been revised to correct the DOB Application No. which read: "320008120" now reads:**

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## \*CORRECTION

This resolution adopted on November 9, 2010, under Calendar No. 395-60-BZ and printed in Volume 95, Bulletin Nos. 45-46, is hereby corrected to read as follows:

### 395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application June 17, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Automotive Repair Shop and Convenience Store use which expired on May 17, 2010. R-5 zoning district.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard, between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Carly Bradley.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on May 17, 2010; and

WHEREAS, a public hearing was held on this application on July 27, 2010 after due notice by publication in *The City Record*, with continued hearings on August 24, 2010, September 14, 2010, and October 26, 2010, and then to decision on November 9, 2010; and

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

WHEREAS, the subject site is located on the northwest corner of Linden Boulevard and Euclid Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1960 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, on January 19, 1999, the Board granted an extension of term and an amendment to allow for the legalization of an enlargement of the accessory building for use as a convenience store; and

WHEREAS, most recently, on November 17, 2009, the Board granted an extension of term, to expire December 9, 2015, an extension of time to obtain a certificate of occupancy, which expired on May 17, 2010, and an

amendment to allow the change in use of portions of the site from Use Group 16 to Use Group 6; and

WHEREAS, the applicant now requests an additional extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained within the allotted time period because the Department of Environmental Conservation (“DEC”) required the applicant to conduct soil testing at the site, which showed that the soil and groundwater are contaminated and must be remediated; and

WHEREAS, the applicant states that DEC has directed the owner to excavate the existing blacktop to remove the contaminated soil and install observation wells to monitor ground water contamination, which must be performed prior to obtaining a new certificate of occupancy; and

WHEREAS, the applicant states that in order to remediate the contaminated soil the owner has hired an environmental consultant to perform the work and will also apply for a city grant under the Brownfield Incentive Grant Program; and

WHEREAS, at hearing, the Board questioned whether the applicant had implemented the site improvement conditions from the prior grant, including the removal of a one-story frame enlargement from the existing building which is not reflected on the BSA-approved plans, the removal of graffiti, and the repaving of the parking lot; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti has been removed from the site, and states that, due to the need to excavate the site in connection with the soil remediation, the demolition of the enlargement of the building and the repaving of the parking lot will take place after the remediation work required by DEC is complete; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated November 1, 1960, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on November 9, 2012; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a new certificate of occupancy shall be obtained by November 9, 2012;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 302265536)

Adopted by the Board of Standards and Appeals, November 9, 2010.

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**\*The resolution has been revised to correct the DOB Application No. which read: “320008120” now reads: “302265536”. Corrected in Bulletin No. 8, Vol. 97, dated February 22, 2012.**

## **\*CORRECTION**

This resolution adopted on January 31, 2012, under Calendar No. 321-63-BZ and printed in Volume 97, Bulletin No. 6, is hereby corrected to read as follows:

### **321-63-BZ**

**APPLICANT** – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Verizon New York, Inc., owner; 1775 Grand Concourse LLC, lessee.

**SUBJECT** – Application October 13, 2011 – Amendment of a special permit (§73-65) which permitted the construction of an 8-story enlargement of a telephone exchange building.

The Amendment seeks to permit Use Groups 6A, 6B and 6C, pursuant to §122-10. R8/Special Grand Concourse Preservation District.

**PREMISES AFFECTED** – 1775 Grand Concourse, west side of the Grand Concourse at the southeast intersection of Walton Avenue and East 175<sup>th</sup> Street, Block 282, Lot 1001-1004, Borough of Bronx.

### **COMMUNITY BOARD #5BX**

#### **APPEARANCES** –

For Applicant: Jay Segal.

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

#### **THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### **THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for the construction of a Use Group 6D telephone exchange building; and

WHEREAS, a public hearing was held on this application on December 6, 2011 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2012, and then to decision on January 31, 2012; and

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

WHEREAS, Community Board 5, Bronx, recommends approval of this application with the certain conditions, including: (1) all signage comply with ZR § 122-20; (2) the main entrance, lobby, elevators and revolving doors respect the historical design of the building; (3) retail establishments not operate on a 24 hour basis; and (4) all Grand Concourse retail store deliveries be in compliance with Department of Transportation regulations to avoid traffic congestion and

unnecessary double parking on the Grand Concourse; and

WHEREAS, the site is bounded by the Grand Concourse to the east, East 175<sup>th</sup> Street to the north, and Walton Avenue to the west, in an R8 zoning district within the Special Grand Concourse Preservation District; and

WHEREAS, the site has approximately 201 feet of frontage on the Grand Concourse, 265 feet of frontage on East 175<sup>th</sup> Street, 190 feet of frontage on Walton Avenue, and a total lot area of 44,288 sq. ft.; and

WHEREAS, the applicant notes that the building is situated such that it contains street level frontage on portions of its first story (on Walton Avenue and East 175<sup>th</sup> Street) and on a portion of its fourth story (on the Grand Concourse); thus, the building has five stories at or above the level of the Grand Concourse and three stories below the level of the Grand Concourse; and

WHEREAS, the subject site is occupied by an eight-story building with the following uses listed on the certificate of occupancy: Use Group 6D telephone exchange at the first, second, third, fifth and sixth floors, Use Group 4 hospital-related office facilities for the Bronx Lebanon Hospital Center (“Bronx Lebanon”) at the fourth floor, and Use Group 6 offices for the New York City Human Resources Administration (“HRA”) at the seventh and eighth floors; and

WHEREAS, the applicant states that the building is currently vacant except for the continued use of the Use Group 6D telephone exchange use on the second and third floors, and portions of the cellar and first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1926 when, under BSA Cal. No. 358-26-BZ, the Board granted a variance to permit the construction of a telephone exchange building on the subject site, which at the time was split-zoned between a business district and a residence district; and

WHEREAS, on June 11, 1963, under the subject calendar number, the Board granted a special permit under ZR § 73-65, to permit the construction of an eight-story enlargement to the existing building, which extended the footprint of the building from approximately 50 percent of the zoning lot to approximately 85 percent of the zoning lot; and

WHEREAS, on March 17, 1987, the Board granted an amendment to permit the fourth story of the building to be used as Use Group 4 hospital related office facilities only for Bronx Lebanon; and

WHEREAS, most recently, on January 6, 1988, the Board granted an amendment to permit the seventh and eighth stories of the building to be used for Use Group 6 offices only for HRA; and

WHEREAS, the applicant now seeks an amendment to permit the following uses: (1) boiler room, storage and telephone exchange equipment at the cellar; (2) an attended accessory group parking facility for 100 cars and open accessory parking for up to ten vehicles, a loading berth and ten to 18 bicycle spaces at the first floor; (3) telephone exchange use at the second and third floors; (4) retail, office and/or limited community facility use at the fourth floor; and

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(5) office and/or limited community facility use at the fifth through eighth floors; and

WHEREAS, the applicant represents that, if not for the existence of the subject special permit, all of the proposed use changes would be allowed as-of-right under the Zoning Resolution; and

WHEREAS, specifically, the applicant states that ZR § 52-34 would allow the conversion of any portion of the building to the proposed limited community facility use as a conforming use in the R8 district, and ZR § 122-10(c) would allow the portions of the building used for Use Group 6D telephone exchange uses on or before July 1, 1981, which constituted the entire building, to be converted to offices; and

WHEREAS, the applicant further states that the fourth story could be converted to retail use as-of-right because its location at street level on the Grand Concourse qualifies it as a “ground floor” pursuant to ZR § 122-10(c); and

WHEREAS, by letter dated December 5, 2011, the Department of City Planning confirms that the term “ground floor” in ZR § 122-10(c) is interpreted in the subject case to include the frontage along the Grand Concourse; and

WHEREAS, subject to a private agreement with the landlord, the applicant states that the community facility uses within the building will be limited to the following uses without sleeping accommodations: (1) colleges or universities, including professional schools but excluding business college or trade schools; (2) museums or non-commercial art galleries but not libraries; (3) schools; (4) ambulatory diagnostic or treatment health care facilities, limited to public, private, for-profit or not-for-profit medical, health and mental health care facilities licensed by the State of New York, or a facility in which patients are diagnosed or treated by health care professionals, licensed by the State of New York or by persons under the supervision of such licensee for medical, health or mental health conditions, and where such patients are ambulatory rather than admitted (such facilities shall not include the practice of veterinary medicine, physical culture or health establishments, ophthalmic dispensing, abortion clinics or drug treatment facilities); (5) non-profit or voluntary hospitals and related facilities without overnight admission, but not animal hospitals; (6) philanthropic or non-profit institutions without sleeping accommodations; and (7) welfare centers; and

WHEREAS, the applicant represents that allowing the vacant portions of the building to be occupied by general offices or limited community facility uses would facilitate the re-tenanting of these spaces; and

WHEREAS, the applicant notes that the fourth, seventh, and eighth floors were previously permitted to be occupied by office use pursuant to amendments granted by the Board, but that the restriction of the space to particular tenants (Bronx Lebanon and HRA, respectively) resulted in the current vacancy of these spaces; and

WHEREAS, the applicant states that, even though no requirement for accessory off-street parking is triggered by the proposed use changes, the number of new parking

spaces proposed (100 in addition to up to ten existing spaces within the open area south of the building) is consistent with general parking principles in the Zoning Resolution; and

WHEREAS, the applicant agreed to comply with the above-mentioned conditions stipulated by the Community Board; and

WHEREAS, at hearing, the Board raised concerns about whether the proposal reflected a sufficient number of loading berths, whether the anticipated number of truck deliveries to the retail space on the site would be compatible with traffic patterns, the operation of the proposed garage, and whether the signage complies with the underlying district regulations; and

WHEREAS, in response, the applicant states that if the subject site were located in a commercial district, two loading berths would be required for the building, but one loading berth is sufficient for the subject building because: (1) the ground floor will not generate a need for loading, as it will be used as a parking garage; (2) the second and third floors will continue to be used as a telephone exchange, which will have a dedicated entrance on Walton Avenue (adjacent to the remaining loading berth) through which most loading requirements will be handled; (3) the fourth floor retail loading will be from the Grand Concourse level (during non-business hours only) instead of from the loading berth, as it will be easier to perform loading activities for the retail spaces directly from the Grand Concourse level rather than from the loading berth at the rear of the building several floors below the retail spaces; and (4) floors five through eight, which are proposed for office use and collectively contain approximately 145,000 sq. ft., will only generate a requirement for one loading berth; and

WHEREAS, the Board raised questions about the effect loading would have on the operation of the bike lane on Grand Concourse; and

WHEREAS, in response, the applicant states that it will put a provision in the lease requiring loading for the retail space to occur only at night, when there is minimal bicycle traffic; and

WHEREAS, as to the anticipated number of truck deliveries to the retail space, the applicant submitted a letter from the owner stating that similar size stores in comparable locations estimate six deliveries a day by parcel size trucks to restock the space; and

WHEREAS, as to the operation of the garage, the applicant states that it is proposing an accessory garage with spaces available to tenants and their invitees; and

WHEREAS, as to signage, the applicant states that all signs will comply with the Special Grand Concourse Preservation District regulations, pursuant to ZR § 122-20; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 11, 1963, so that as amended this portion of the resolution shall read: “to permit the proposed modifications to the previously-approved plans; *on condition* that all work shall substantially

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conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received October 13, 2011'-(13) sheets and 'November 22, 2011'-(3) sheets; and *on further condition:*

THAT all signage shall comply with the Special Grand Concourse Preservation District regulations, pursuant to ZR § 122-20;

THAT all retail uses on the site shall not operate on a 24-hour basis;

THAT vehicle loading for retail uses from Grand Concourse will be limited to the hours of 7:00 p.m. through 7:00 a.m. and such condition will be reflected on all retail leases;

THAT the community facility uses within the building shall not include sleeping accommodations and shall be limited to the uses indicated on the BSA-approved plans;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 220143146)

Adopted by the Board of Standards and Appeals January 31, 2012.

**\*The resolution has been revised to amend the clause in the 3<sup>rd</sup> Condition. Corrected in Bulletin No. 8, Vol. 97, dated February 22, 2012.**

## \*CORRECTION

This resolution adopted on February 7, 2012, under Calendar No. 54-11-BZ and printed in Volume 97, Bulletin No. 7, is hereby corrected to read as follows:

### 54-11-BZ

#### CEQR #11-BSA-087K

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 5522, Lot 36 & 42, Borough of Brooklyn.

#### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 25, 2011, acting on Department of Buildings Application No. 310101047, reads in pertinent part:

Proposed number of accessory parking spaces for the building at the premises is less than the number of parking spaces required by ZR Section 36-21; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C1-3 (R6) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use community facility/commercial building from 231 to 177, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in The City Record, with continued hearings on September 13, 2011, October 18, 2011, November 22, 2011 and January 10, 2012, and then to decision on February 7, 2012; and

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

WHEREAS, City Council Member David G. Greenfield and New York State Assemblymember William Colton provided testimony in opposition to the application; and

WHEREAS, Community Board 12, Brooklyn, recommended disapproval of the application; and

WHEREAS, the Neighbors for the Preservation and

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Development of Brooklyn Southwest, represented by counsel, provided testimony in opposition to the proposal stating concerns that (1) the applicant does not meet the requirements of the special permit including that it act in good faith, (2) there is a discrepancy between the required number of parking spaces set forth in the as-of-right approval and the proposal for a reduction before the Board, (3) there are flaws in the parking studies and the calculation of parking demand, and (4) any reduction in parking will negatively impact the surrounding area; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application, citing concerns with its effect on parking in the surrounding neighborhood due to high parking demand associated with three area schools and existing parking demands; and

WHEREAS, the subject site is located on a through lot with frontage on Bay Parkway, 61<sup>st</sup> Street, and 60<sup>th</sup> Street, within a C1-3 (R6) zoning district; and

WHEREAS, the site is under construction with an as-of-right mixed-use community facility/commercial building, pursuant to DOB approval; and

WHEREAS, the applicant initially proposed a nine-story mixed-use community facility/commercial building with 93,920 sq. ft. of floor area and 120 accessory parking spaces, which required a reduction from the required 235 parking spaces (four for commercial use and 231 for community facility use); and

WHEREAS, at the Board's direction and after several iterations, the applicant now proposes a nine-story mixed-use community facility/commercial building with 92,304 sq. ft. of floor area (90,837 sq. ft. for community facility use and 1,467 sq. ft. for commercial use) and 177 accessory parking spaces with a program as follows: (1) 57 parking spaces in the cellar (including 18 stackers); (2) UG 6 commercial use and UG 4 community facility use on the first floor; (3) 48 parking spaces on the second floor; (4) 72 parking spaces on the third floor; and (5) community facility use on the fourth through ninth floors; and

WHEREAS, the initial proposal reflected an attended parking lot without stackers and the current proposal reflects an attended parking lot with stackers; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C1-3 (R6) zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable ZR provision, for ambulatory diagnostic or treatment facilities in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 36-21 the total number of required parking spaces for all uses at the site is 231; and

WHEREAS, the applicant represents that the proposed 177 parking spaces are sufficient to accommodate the parking demand generated by the use of the site; and

WHEREAS, the applicant notes that 1,467 sq. ft. of floor area in the building is occupied by commercial space, which is not in parking category B1 and therefore the

associated four required spaces have been excluded from the calculations for the requested reduction in parking; and

WHEREAS, the applicant states that the remaining 90,837 sq. ft. of floor area at the site will be occupied by ambulatory diagnostic or treatment facility space, which is eligible for the parking reduction under ZR § 73-44; at a rate of one required parking space per 400 sq. ft. of floor area, 227 parking spaces are required for this use; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 227; as noted, the special permit allows for a reduction from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area, which would reduce the required parking for these uses to 114 spaces; and

WHEREAS, as noted, an additional four parking spaces are required for the 1,467 sq. ft. of floor area occupied by commercial space, which is not eligible for the special permit; and

WHEREAS, thus, the special permit allows for a reduction to a total of 118 parking spaces on the site; and

WHEREAS, the applicant notes that the proposed total of 177 accessory parking spaces would provide 59 more spaces than the minimum of 118 required under the special permit; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant states that the facility will be occupied by existing ambulatory diagnostic facilities currently operating in the area, including those associated with Maimonides Hospital, who are waiting to move to the site and who have committed to lease 52,650 sq. ft. of the building; the remaining floor area is anticipated to be used and restricted to similar ambulatory diagnostic uses; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response to the community's concerns about parking demand, the applicant asserts that its studies reflect a peak parking demand of 131 cars, and the proposed 173 spaces for community facility use provide an excess of 42 parking spaces, or 32 percent more than is required to satisfy the peak parking demand; and

WHEREAS, the applicant asserts that the onsite parking will be able to accommodate the facility's parking



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demand and will not create a demand for curbside or other off-site parking; and

WHEREAS, in support of this assertion, the applicant submitted a parking demand analysis into the record; and

WHEREAS, the applicant notes that its parking demand analysis was based on Institute of Transportation Engineers (ITE) traffic standards to establish the number of person trips to the site, which reflects 317 person trips during peak periods; and

WHEREAS, however, the applicant notes that to establish the number of people who would drive to the site, it performed a parking demand survey from the existing facilities to be relocated to the site, which reflected that 38 percent of patients and employees would drive to the site daily; and

WHEREAS, the applicant then applied the 38 percent to the ITE data and found that the peak parking demand would be 121 spaces, which is a revision of a prior determination of 131 spaces due to a failure to account for the overlap of 75 percent of patients of one of the building's programs (RadNet) to other programs in the building; and

WHEREAS, the applicant notes that if it were to use its survey data, rather than the adjusted ITE data and apply it to the entire building, the peak parking demand would be 143 spaces; and

WHEREAS, the applicant derives the more conservative 143 spaces by noting that, based on surveys of the existing offsite facilities, 151 people (93 patients and 58 staff) will drive to the site to visit the practices occupying 52,650 sq. ft. of the already leased space; the applicant extrapolated that the remaining portions of the building not already leased will be occupied by tenants with similar travel characteristics and thus, for the additional 38,187 sq. ft. of community facility space, the result would be 139 additional daily driving trips (91 patients and 48 staff); and

WHEREAS, the applicant's analysis resulted in a conclusion that 151 trips (based on the survey) and 139 trips (based on extrapolation) amount to 290 daily vehicle trips, consisting of 184 patient and 106 staff trips; and

WHEREAS, the applicant asserts that patient visits will have an anticipated duration of two hours and will be spread across the course of a ten-hour day from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant concludes that the proposed 173 spaces would accommodate the peak parking demand under either the ITE or parking survey of existing facilities methodologies as the adjusted ITE analysis reflects a peak parking demand of 121 parking spaces for community facility use, or 52 fewer spaces than the proposed, and the parking survey analysis reflects a demand of 143 parking spaces, or 30 fewer than the proposed; and

WHEREAS, during the hearing process, the Board directed the applicant to explore redesign of the parking facilities to maximize utility and to eliminate any non-essential space (such as the cafeteria) in the cellar to allow for additional parking; and

WHEREAS, in response, the applicant stated that the

first floor cannot be re-designed since it will be occupied by MRI equipment which, due to its sensitivity and size must be located on the first floor so that it can be serviced and moved through a portion of removable facade; and

WHEREAS, the applicant has met with DOB to review the maneuverability and other parking calculations and has maximized the number of stackers, which it will reserve for employee use; and

WHEREAS, in response to questions about maximum parking space occupancy, the applicant confirmed DOB's requirement for 200 sq. ft. per car and 153 sq. ft. per car for the second car in a stacker; and

WHEREAS, accordingly, after the redesign of the cellar space and removal of all nonessential spaces, the applicant states that DOB would not approve any more spaces and/or stackers than the 57 proposed for the cellar and the corresponding numbers on the second and third floor; and

WHEREAS, based upon the applicant's revised analysis and current parking layout, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, in response to the opposition's concerns that the surveys which analyze the number of people coming to the site by car versus public transportation may not be comparable to the proposed location, the applicant noted that public transportation access to the subject site, including two buses (B6 and B9) within one block of the site, two subways (F and N) approximately one-third of a mile from the site, and four buses (B4, B11, B8, and B82) within .6 to .91 miles from the site, is better than that of the existing sites studied in the transportation surveys; and

WHEREAS, accordingly, the applicant asserts that the car versus public transportation assumptions it applied to the proposed site are conservative since based on areas with less access to public transportation; and

WHEREAS, the applicant also notes that it will be providing a bicycle storage room and states that it will encourage bicycle use and carpooling; and

WHEREAS, the applicant also states that it approached several potential off site locations for parking, and was unable to find any with available parking spaces; and

WHEREAS, in response to the opposition's questions about different DOB approvals, the Board notes that DOB has approved as-of-right plans, which allow the applicant to continue construction, in contrast to the proposed plans before the Board which will allow for the as-of-right plans to be amended; and

WHEREAS, the Board notes that 231 spaces are required for the proposed building and that a smaller building was approved at DOB, which requires only 206 parking spaces; the waiver request is from 231 spaces (less the four spaces for commercial use); and

WHEREAS, the Board notes that the special permit allows for a reduction in parking by 50 percent and that the current proposal for 173 spaces for community facility use reflects a reduction of 54 spaces or approximately 24

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percent; and

WHEREAS, the Board notes that the proposed use is as-of-right and the reduction is less than half the maximum reduction contemplated by the special permit; and

WHEREAS, accordingly, the Board finds that the proposed use will not have an adverse impact on the community, will not interfere with any public improvement project, and will not interfere with the existing street system; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA087K, dated July 11, 2011; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to permit, within an C1-3 (R6) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use community facility/commercial building from 231 to 177, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 1, 2012"-twenty-two ( 22 ) sheets, and on further condition:

THAT there will be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of 177 parking spaces will be provided in the accessory parking garage in the subject

building;

THAT no certificate of occupancy will be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the layout and design of the accessory parking lot will be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, February 7, 2012.

**\*The resolution has been revised to correct the required parking spaces and the community facility use in the 11<sup>th</sup> WHEREAS, which read: "...231 parking spaces and 227 for community facility use..." now reads: "...235 parking spaces and 231 for community facility use..." , and to amend the clause in the 48<sup>th</sup> WHEREAS. Corrected in Bulletin No. 8, Vol. 97, dated February 22, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on February 7, 2012, under Calendar No. 166-11-BZ and printed in Volume 97, Bulletin No. 7, is hereby corrected to read as follows:

### 166-11-BZ

#### CEQR #12-BSA-035M

APPLICANT – Ellen Hay/Wachtel & Masyr LLP, for Roc Le Triomphe Associates LLC, owners; Crunch LLC, lessee. SUBJECT – Application October 24, 2011 – Special Permit (§73-36) to continue the operation of the Physical Culture Establishment (*Crunch Fitness*). C2-8 (TA) zoning district. PREMISES AFFECTED – 1109 Second Avenue, aka 245 East 58<sup>th</sup> Street, west side of Second Avenue between East 58<sup>th</sup> and East 59<sup>th</sup> Streets, Block 1332, Lot 29, Borough of Manhattan.

#### COMMUNITY BOARD #6M

##### APPEARANCES –

For Applicant: Ellen Hay.

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

##### THE VOTE TO GRANT –

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

##### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 12, 2011, acting on Department of Buildings Application No. 120857260, reads in pertinent part:

Proposed Physical Culture establishment is not permitted as per ZR 73-36 unless granted special permits by the Board of Standards and Appeals as per ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an C2-8 zoning district within the Special Transit Land Use District (TA), the operation of a physical culture establishment (“PCE”) in a portion of the first floor, cellar, and sub-cellar of a 29-story mixed-use residential/commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, and then to decision on February 7, 2012; and

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

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the subject site located on the west side of Second Avenue between East 58<sup>th</sup> Street and East 59<sup>th</sup> Street in a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site is occupied by a 29-story

mixed-use residential/commercial building with residential use on the fourth through 29<sup>th</sup> floors and commercial use on the sub-cellar, cellar, first, and second levels; and

WHEREAS, the Board first approved the PCE on July 22, 1997, pursuant to BSA Cal. No. 195-96-BZ, for a term of ten years which expired on October 1, 2006; and

WHEREAS, the site is also the subject of a City Planning special permit for the building pursuant to ZR § 74-95, which was modified to allow for the PCE and associated signage; and

WHEREAS, the PCE occupies 36,119 sq. ft. of floor space on portions of the sub-cellar, cellar, and first floor levels; and

WHEREAS, the PCE is operated as Crunch Fitness; and

WHEREAS, the PCE operates Monday through Thursday 5:00 a.m. to 11:00 p.m.; Friday 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that commercial and accessory residential uses on the second and third floor separate and, thus serve as a buffer between, the PCE on the first floor from the residential use on the fourth floor and above; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA035M, dated October 19, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure;

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# MINUTES

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Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

dated February 22, 2012.

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an C2-8 zoning district within the Special Transit Land Use District (TA), the operation of a physical culture establishment in a portion of the first floor, cellar, and sub-cellar of a 29-story mixed-use residential/commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 20, 2011"- (5) sheets, and *on further condition*:

THAT the term of this grant will expire on February 7, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

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

THAT sound attenuation measures must be installed in the PCE as shown on the Board-approved plans;

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

THAT substantial construction will be completed in accordance with ZR § 73-70;

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

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

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

Adopted by the Board of Standards and Appeals, February 7, 2012.

**\*The resolution has been revised to correct the term of this grant which read: "February 7, 2012"... now reads: "February 7, 2022". Corrected in Bulletin No. 8, Vol. 97,**

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 97, Nos. 9-10

March 8, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

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# DOCKET

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New Case Filed Up to February 28, 2012  
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**41-12-A**

112-26 38th Avenue, 225' from the corner of 112th Street and 38th Avenue., Block 1785, Lot(s) 10, Borough of **Queens, Community Board: 3**. Appeal seeking a common law vested right to continue developemnt commenced under the prior R6 Zoning District . R5A Zoning District . district.  
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**42-12-BZ**

158 West 27th Street, south side of 27th Street, between Avenue of the Americas and Seventh Avenue., Block 802, Lot(s) 75, Borough of **Manhattan, Community Board: 5**. This application is filed pursuant to Sections 42-31 and 73-36 of the Zoning Resolution seeking a special permit to allow the operation of a physical culture establishment on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 district.  
-----

**43-12-BZ**

25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets., Block 530, Lot(s) 19, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the construction of a residential development of approximately 30,792 square feet on a 25'8"x200'2" through lot which does not comply with the use or bulk regulations for the M1-5B zoning district. M1-5B district.  
-----

**44-12-BZ**

1024 Flatbush Avenue, west side of Flatbush Avenue between Regent Place and Beverly Road., Block 5125, Lot(s) 56, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to ZR§73-36 seeking a special permit to allow the operation of a physical culture establishment within an existing four-story building that is locted in a C4-4A zoning district. C4-4A district.  
-----

**45-12-BZ**

1914 50th Street, 100' easterly from the corner formed by the easterly side of 19th Avenue and the south side of 50th Street., Block 5462, Lot(s) 12, Borough of **Brooklyn, Community Board: 12**. Propoed Synagogue (UG4) in an R5 zoning district. R5 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**MARCH 20, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 20, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**442-42-BZ**

APPLICANT – Eric Palatnik, P.C., for Cropsey-20th Avenue Corp, owner.  
SUBJECT – Application November 17, 2011 – Pursuant to (§11-412) an Amendment to enlarge the existing building and to legalize the conversion of the automotive repair bays of an existing gasoline service station (Shell) to an accessory convenience store. R-5 zoning district.  
PREMISES AFFECTED – 2001/2011 Cropsey Avenue, northeast corner of 20<sup>th</sup> Avenue and Cropsey Avenue, Block 6442, Lot 5, Borough of Brooklyn.  
**COMMUNITY BOARD #11BK**

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**1259-79-BZ**

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> Street, LLC c/o Madison Realty Capital, L.P., owner.  
SUBJECT – Application December 15, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to convert the 4th and 6th floors of the existing building from manufacturing lofts to residential use which expired on April 27, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 27, 2011; waiver of the Board's Rules of Practice and Procedure. M1-6 zoning district.  
PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, north side of West 26<sup>th</sup> Street, 350' east of 6<sup>th</sup> Avenue, Block 828, Lot 16, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

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**286-00-BZ**

APPLICANT – Law Offices of Mitchell S. Ross, for Whitewall Properties II, LLC, owner; New York Health and Racquet Club, lessee.  
SUBJECT – Application January 27, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Health and Racquet Club*) located on the first and second floors of a twenty story mixed-use building, which expired on March 27, 2011; waiver of the rules. C6-3A/C6-4M zoning district.  
PREMISES AFFECTED – 60 West 23<sup>rd</sup> Street, northeast corner of Sixth Avenue and West 23<sup>rd</sup> Street, Block 824, Lot 11, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

**203-07-BZ**

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.  
SUBJECT – Application December 30, 2011 – This application is filed pursuant to ZR §§72-01 and 72-22 and seeks an amendment to the BSA-approved plans to permit changes to the interior layout of the proposed mixed-use building, including an increase in the number of dwelling units and parking spaces and to permit attended parking spaces that do not comply with the minimum 200sf per space per ZR §36-521.  
PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.  
**COMMUNITY BOARD #7Q**

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**APPEALS CALENDAR**

**99-11-A**

APPLICANT – Eric Palatnik, P.C., for Naila Aatif, owner.  
SUBJECT – Application July 8, 2011 – Application seeking to legalize an alteration of a two family residence which does not front upon a legally mapped street, contrary to General City Law 36. R6 Zoning District.  
PREMISES AFFECTED – 16 Brighton 7<sup>th</sup> Walk, between Brighton 7<sup>th</sup> Street and Brighton 8<sup>th</sup> Street. Block 8667, Lot 774, Borough of Brooklyn.  
**COMMUNITY BOARD #13BK**

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**MARCH 20, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 20, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**102-11-BZ**

APPLICANT – H. Irving Sigman, for S & I Property Management, LLC, owner.  
SUBJECT – Application July 20, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (New York Spa). C4-4 zoning district.  
PREMISES AFFECTED – 131-23 31<sup>st</sup> Avenue, northwest corner of the intersection of 31<sup>st</sup> Avenue & Whitestone Expressway (West Service Road). Block 4361, Lot 27. Borough of Queens.  
**COMMUNITY BOARD #7Q**



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# CALENDAR

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**182-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for 775 Broadway Acquisition LLC c/o The Jackson Group LLC, owner; 777 Broadway Fitness Group, lessee.

SUBJECT – Application December 5, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment on a portion of the first, second and third floors of the existing three-story building. C4-3 zoning district.

PREMISES AFFECTED – 777 Broadway, located on the east corner of the intersection formed by Broadway and Summer Place. Block 3131, Lot 6. Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

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**3-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Mr. Michael Weissman, owner.

SUBJECT – Application January 4, 2012 – Special Permit (§73-622) for the enlargement an existing single family home which exceeds the maximum floor area (§23-141(b)) and less than the minimum side yard requirement (§23-461(b)). R4 zoning district.

PREMISES AFFECTED – 1913 East 28<sup>th</sup> Street, east side of East 28th Street, 100' south of Avenue S. Block 7307, Lot 88, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 28, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**295-57-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Aranoff Family Limited Partnership, owners.

SUBJECT – Application September 7, 2011 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expired on August 7, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2002. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, northwest corner of Union Turnpike and 147<sup>th</sup> Street, Block 6672, Lot 80, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Todd Dale.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a re-opening, an extension of term of a previously granted variance to permit the operation of a gas station, which expired on August 7, 2011 and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2012, and then to decision on February 28, 2012; and

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

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

WHEREAS, the subject site is located on the northwest corner of Union Turnpike and 147<sup>th</sup> Street, within a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 1, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with car wash, lubrication, and minor repairs with hand tools for a term of 15

years; and

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

WHEREAS, most recently, on August 7, 2001, the Board granted a ten-year extension of term, which expired on August 7, 2011; and

WHEREAS, one of the conditions of the resolution was that a new certificate of occupancy be obtained by February 7, 2003 (18 months from the date of the August 7, 2001 approval); and

WHEREAS, the applicant states that it did not obtain a new certificate of occupancy due to change in management; and

WHEREAS, the applicant now requests an additional ten-year extension of term and time to obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board raised concerns about the landscaping plan and compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant stated that (1) it will complete landscaping during warmer weather; and (2) that it has removed signage on the light poles in order comply with C1 district signage regulations; and

WHEREAS, the applicant provided photographs that reflect the removal of the signage; and

WHEREAS, based upon the above, the Board finds the requested extension of term and extension of time to obtain a certificate of occupancy, with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 1, 1957, so that as amended this portion of the resolution shall read: “to extend the term for ten years from August 7, 2011, to expire on August 7, 2021, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on February 28, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘January 20, 2012’-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on August 7, 2021;

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

THAT landscaping will be maintained as reflected on the Board-approved plans;

THAT all signage on the site will comply with C1 district regulations;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by February 28, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

# MINUTES

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.” (N.B. 956/1957)

Adopted by the Board of Standards and Appeals February 28, 2012.

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## 611-76-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Capitol One Bank, owner.

SUBJECT – Application November 15, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an off-site accessory parking facility for a bank (*Capitol One*) which expires on February 15, 2012. R4 zoning district.

PREMISES AFFECTED – 43-17/21 214<sup>th</sup> Place, east side 161.24’ north of Northern Boulevard, Block 6301, Lot 9, 10, 11, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a variance for an off-site accessory parking facility for a bank, which expired on February 15, 2012; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application with the following conditions that: (1) there be no parking on the sidewalk; (2) the premises be kept clean of debris and graffiti; (3) all conditions appear on the certificate of occupancy; (4) a new certificate of occupancy be obtained within one year from the date of the resolution; and (5) a sign be installed on the gate with an emergency contact number; and

WHEREAS, the site is located on the east side of 214<sup>th</sup> Place, 161 feet north of Northern Boulevard, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 15, 1977 when, under the subject calendar number, the Board granted a variance to permit the construction of an off-site accessory parking

facility for a bank, that extends into the R4 zoning district; and

WHEREAS, subsequently, the grant was amended by the Board at various times; and

WHEREAS, most recently, on May 21, 2002, the Board granted a ten-year extension of term to expire on February 15, 2012; and

WHEREAS, at hearing, the Board asked the applicant to address the Community Board’s concerns including the security of the parking lot after hours as well as its own observation about insufficient landscaping; and

WHEREAS, in response, the applicant stated that (1) it will comply with all of the Community Board’s conditions; (2) specifically, it will lock the gate after business hours and add a sign to the gate with an emergency phone number for access; and (3) it will complete landscaping during warmer weather; and

WHEREAS, based upon its review of the record, the Board finds the requested ten-year extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 15, 1977, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of term from February 15, 2012 to February 15, 2022; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received November 15, 2012’–(1) sheet; and *on further condition*:

THAT the term of the grant will expire on February 15, 2022;

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

THAT landscaping will be maintained as reflected on the Board-approved plans;

THAT there be no parking on the sidewalk;

THAT the gate be locked after business hours;

THAT a sign be installed and maintained on the gate, with an emergency contact telephone number;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by February 28, 2013;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (Alt. 893-74)

Adopted by the Board of Standards and Appeals February 28, 2012.

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# MINUTES

## 540-86-BZ

APPLICANT – Slater & Beckerman, LLP, for 148 Jamaica Avenue Co., LLC, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of a Special Permit (§73-42) for the continued operation of a one story UG6 commercial building (*Key Food*); an amendment to eliminate the restriction on hours of operation. C4-2A/R6B zoning district.

PREMISES AFFECTED – 32-11/32-21 Newton Avenue, northwest corner of Newton Avenue and 33<sup>rd</sup> Street, Block 619, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stefanie Marczzi.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a special permit for a supermarket, which will expire on June 23, 2012, and an amendment to remove the restriction on the hours of operation; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application with the following conditions: (1) the applicant comply with the prior approval except the proposed new time of operation; (2) truck deliveries not take place from 7:00 to 10:00 a.m. and 4:00 to 7:00 p.m.; and (3) during deliveries truck engines be turned off; and

WHEREAS, the site is located on the northwest corner of Newton Avenue and 33<sup>rd</sup> Street, partially within a C4-2A and partially within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since July 23, 1957 when, under BSA Cal. No. 60-37-BZ, it granted a variance to allow, partially within a commercial district and partially within a residential district, a parking lot with more than three cars; and

WHEREAS, subsequently, the grant was amended by the Board at various times; and

WHEREAS, on June 23, 1987, under the subject calendar number, the Board granted a special permit to allow a one-story horizontal enlargement of a commercial building within what was then partially a C1-2 (R6) and partially an R6 zoning district; and

WHEREAS, subsequently, on October 22, 2002, the Board granted an extension of the term to expire on June 23, 2012; and

WHEREAS, the site is occupied by a supermarket (*Key Food*) with accessory parking; and

WHEREAS, as to the hours of operation, the applicant states that it intends to operate the supermarket from 7:00 a.m. to 11:00 p.m. Monday to Saturday and from 8:00 a.m. to 10:00 p.m. on Sunday; and

WHEREAS, however, the applicant seeks to eliminate the restriction on hours as the sole public entrance to the supermarket is on Newton Avenue, entirely within a C4-2A zoning district where the use is permitted as of right, and the use with extended hours is compatible with surrounding uses; and

WHEREAS, at hearing, the Board inquired about the condition and use of the parking lot, which is adjacent to residential use; and

WHEREAS, in response, the applicant stated that the parking lot is only used by employees, lights are pointed down and away from residential use, and there is an opaque fence which provides screening; and

WHEREAS, additionally, the applicant stated that there are no late night or early morning deliveries; and

WHEREAS, based upon its review of the record, the Board finds the requested ten-year extension of term and the elimination of the hours restriction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 23, 1987, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of term from June 23, 2012 to June 23, 2022; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received November 4, 2011’-(4) sheets and ‘January 17, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on June 23, 2022;

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

THAT truck engines be turned off during deliveries;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by February 28, 2013;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB App. No. 420463581)

Adopted by the Board of Standards and Appeals February 28, 2012.

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# MINUTES

## 290-03-BZ

APPLICANT – Patrick W. Jones, P.C., for Joseph Rosenblatt, owner; Graceful Services, Inc., lessee.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1097 Second Avenue, west side of Second Avenue, 40' south of East 58<sup>th</sup> Street, Block 1331, Lot 126, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patrick W. Jones.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of term for the continued operation of a physical culture establishment (PCE), which expired on September 26, 2011, and an extension of time to obtain a certificate of occupancy, which expired on April 20, 2005; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2012, and then to decision on February 28, 2012; and

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

WHEREAS, the PCE is located on the west side of Second Avenue, south of East 58<sup>th</sup> Street, within a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site at 1097 Second Avenue is located adjacent to another PCE space at 1095 Second Avenue to which it is connected; a special permit for the adjacent space was granted by the Board in 2006 pursuant to BSA Cal. No. 40-05-BZ and follows the same term expiration as the subject case; the Board granted an extension of term for the companion application on the same date; and

WHEREAS, the PCE occupies approximately 952 sq. ft. on the second floor of a four-story mixed-use commercial/residential building; and

WHEREAS, the PCE is operated as Graceful Services; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 20, 2004 when, under the subject calendar number, the Board granted a special permit for the legalization of a PCE to expire on September 26, 2011; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by April 20, 2005; and

WHEREAS, the applicant now requests a ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, in consultation with the Fire Department, the applicant agrees to install hard-wired smoke detectors with battery backup; and

WHEREAS, accordingly, the applicant revised the plans to identify the location of the smoke detectors; and

WHEREAS, based upon its review of the record, the Board finds that the requested 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 *re-opens* and *amends* the resolution, as adopted on April 20, 2004, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years from September 26, 2011 to September 26, 2021 and to extend the time to obtain a certificate of occupancy to February 28, 2013, *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received January 19, 2012’-(9) sheets; and *on further condition*:

THAT the term of the grant will expire on September 26, 2021;

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

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

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

THAT a certificate of occupancy must be obtained by February 28, 2013;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 103523457)

Adopted by the Board of Standards and Appeals, February 28, 2012.

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## 40-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 2<sup>nd</sup> Avenue, Property LLC, owner; Graceful Services, Inc., lessees.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

# MINUTES

PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue 60.5’ south of East 58<sup>th</sup> Street, Block 1331, Lot 25, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Patrick W. Jones.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of term for the continued operation of a physical culture establishment (PCE), which expired on September 26, 2011, an amendment to legalize an increase in floor area, and an extension of time to obtain a certificate of occupancy, which expired on April 20, 2005; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2012, and then to decision on February 28, 2012; and

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

WHEREAS, the PCE is located on the west side of Second Avenue, south of East 58<sup>th</sup> Street, within a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site at 1095 Second Avenue is located adjacent to another PCE space at 1097 Second Avenue to which it is connected; a special permit for the adjacent space was granted by the Board in 2004 pursuant to BSA Cal. No. 290-03-BZ and follows the same term expiration as the subject case; the Board granted an extension of term for the companion application on the same date; and

WHEREAS, the PCE occupies approximately 1,495 sq. ft. (which includes the enlargement to be legalized) on the second floor of a four-story mixed-use commercial/residential building; and

WHEREAS, the PCE is operated as Graceful Services; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 7, 2006 when, under the subject calendar number, the Board granted a special permit for the PCE to expire on September 26, 2011; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by February 7, 2007; and

WHEREAS, the applicant now requests a ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks to legalize the enlargement from approximately 1,075 sq. ft. to 1,495 sq. ft., which it completed pursuant to DOB approval; and

WHEREAS, in consultation with the Fire Department, the applicant agrees to install hard-wired smoke detectors with battery backup; and

WHEREAS, accordingly, the applicant revised the plans to identify the location of the smoke detectors; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term, amendment, 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 *re-opens* and *amends* the resolution, as adopted on February 7, 2006, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years from September 26, 2011 to September 26, 2021, to allow an amendment to the approved plans, and to extend the time to obtain a certificate of occupancy to February 28, 2013, *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received January 19, 2012’-(9) sheets; and *on further condition*:

THAT the term of the grant will expire on September 26, 2021;

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

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; THAT the above conditions will appear on the Certificate of Occupancy;

THAT a certificate of occupancy must be obtained by February 28, 2013;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 103997837)

Adopted by the Board of Standards and Appeals, February 28, 2012.

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**118-53-BZ**

APPLICANT – Issa Khorasanchi, for Henry R. Jenet, owner.

SUBJECT – Application October 24, 2011 – Extension of Term (§11-411) for continued operation of UG6 retail stores which expired on December 7, 2011. R4 zoning district.

PREMISES AFFECTED – 106-57/61 160<sup>th</sup> Street, east side of 160<sup>th</sup> Street, 25’ north of intersection of 107<sup>th</sup> Avenue and 160<sup>th</sup> Street, Block 10128, Lot 50, Borough of Queens.

**COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Issa Khorasanchi.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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# MINUTES

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Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for decision, hearing closed.  
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## **820-67-BZ**

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of Term of an approved Variance (§72-21) for the operation of a automotive repair shop (UG16) which expired on November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Willy C. Yuin, R.A.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for continued hearing.  
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## **636-70-BZ**

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Kings 108 Car Care, Inc. (Mobile S/S), lessee.

SUBJECT – Application January 24, 2012 – Amendment to an approved Special Permit (§73-211) for the operation of an automotive service station (UG 16B) with accessory uses. C2-2/R6 zoning district.

PREMISES AFFECTED – 105-45 to105-55 Horace Harding Expressway, northwest corner 108<sup>th</sup> Street, Block 1694, Lot 23. Borough of Queens.

### **COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: John Ronan.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for continued hearing.  
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## **188-78-BZ**

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Amendment (§11-413) to a previously granted Variance (§72-21) to add (UG16) automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81<sup>st</sup> Street, Block 6313, Lot 31, Borough of Brooklyn.

### **COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for continued hearing.  
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## **172-86-BZ**

APPLICANT – Sheldon Lobel, P.C., for Clearview Mortgage Bank Corporation, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of an approved Variance (§72-21) which permitted the construction of a two-story UG6 professional office building which expires on March 31, 2012. R2 zoning district.

PREMISES AFFECTED – 256-10 Union Turnpike, south side of Union Turnpike between 256<sup>th</sup> and 257<sup>th</sup> Streets, Block 8693, Lot 14, Borough of Queens.

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

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for continued hearing.  
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## **11-93-BZ**

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

### **COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for decision, hearing closed.  
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## **11-01-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for P.J. Christy, Inc., owner.

SUBJECT – Application August 8, 2011 – Extension of Term for a gasoline service station (*BP British Petroleum*) which expired on August 7, 2011 and Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2006. C1-2/R5 zoning district.

PREMISES AFFECTED – 586/606 Conduit Boulevard, Pitkin Avenue and Autumn Avenue on the west, Block 4219, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for decision, hearing closed.

## 327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Amendment to a Variance (§72-21) to increase the size of an existing Synagogue and School (*Beth Gavriel*) and alter the facade. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, between 66<sup>th</sup> Road and 67<sup>th</sup> Avenue, Block 2175, Lot 1, Borough of Queens.

### COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for decision, hearing closed.

## 248-08-BZ

APPLICANT – New York City Board of Standards

OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

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

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

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik and Bishop Alexander.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for dismissal calendar.

## APPEALS CALENDAR

### 29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, February 28, 2012.

### 186-11-A

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for 170 Broadway NYC LP c/o Highgate Holdings, Inc., owner.

SUBJECT – Application December 8, 2011 – Application pursuant to Multiple Dwelling Law ("MDL") Section 310(2)(a) to waive the court and yard requirements of MDL Section 26 to facilitate the conversion of an existing office building to a transient hotel. C5-5/LM zoning district.

PREMISES AFFECTED – 170 Broadway, southeast corner of Broadway and Maiden Lane. Block 64, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Gary Tarnoff.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 10, 2011, acting on Department of Buildings Application No. 120824073 reads, in pertinent part:

Proposed to convert an 18-story office building to a Use Group 5 transient hotel is not permitted, as such conversion will not comply with the minimum width and area of inner court requirements of MDL Section 26(7). Legally required windows open onto an existing inner court that also does not comply with MDL Section 26(7).

Legally required windows open onto an existing rear yard that does not comply with MDL Section 26(5) and ZR Section 33-261; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law ("MDL") § 310, to vary court and rear yard requirements in order to allow for the proposed conversion of the subject building from office use (Use Group 6) to a transient hotel (Use Group 5), contrary to the court requirements of MDL § 26(7) and the rear yard requirements of



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MDL § 26(5) and ZR § 33-261; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, the subject site is located on the southeast corner of Broadway and Maiden Lane, within a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the site has 76.63 feet of frontage along Broadway, 110.88 feet of frontage along Maiden Lane, and a total lot area of 9,066 sq. ft.; and

WHEREAS, the site is occupied by an 18-story office building with ground floor retail space; and

WHEREAS, the applicant states that the existing building was constructed in 1903 and has a pre-existing non-complying floor area of 151,033.5 sq. ft. (16.6 FAR); the maximum permitted floor area is 135,988.5 sq. ft. (15.0 FAR); and

WHEREAS, the applicant proposes to convert the existing building to a transient hotel with 261 hotel units on the fourth through 18<sup>th</sup> floors, and retail uses on the first through third floors (the "Proposed Hotel"), which is a permitted use in the underlying zoning district but does not comply with the court requirements of MDL § 26(7) or the rear yard requirements of MDL § 26(5) and ZR § 33-261; and

WHEREAS, the applicant proposes to make extensive alterations to the interior of the building in order to provide the Proposed Hotel with 261 hotel units, but notes that all work will be carried out within the existing building envelope and will not result in any enlargement of the existing building or an increase in its floor area; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered "class B" multiple dwellings; therefore the Department of Buildings ("DOB") has determined that the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that, of the 261 hotel units in the Proposed Hotel, 171 units will have required windows that open onto a street, 75 units will have required windows that open onto an existing court with a width of 28.5 feet and a depth ranging from approximately 30 feet to 31.5 feet located at the rear of the building (the "Court"), and 15 units will have required windows that open onto an existing rear yard with a width of 7.5 feet and a depth of 39.5 feet located at the southeast corner of the site (the "Rear Yard"); and

WHEREAS, pursuant to MDL § 4(32), the Court is considered an "inner court;" and

WHEREAS, MDL § 26(7) states that, except as

otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the Court has a height of 214 feet and pursuant to MDL § 26(7), would therefore be required to have a width of at least 71.3 feet; consequently, the 28.5-ft. width of the Court does not comply with the minimum width requirement; and

WHEREAS, the applicant further states that the Court has an area of 886 sq. ft., which does not equal twice the square of the required width of a complying court and is less than 1,200 sq. ft., and, accordingly, will not comply with the applicable minimum area requirement of MDL § 26(7); and

WHEREAS, as to the Rear Yard, MDL § 26(5) sets forth requirements for rear yards "except as otherwise provided in the [Z]oning [R]esolution;" and

WHEREAS, ZR § 33-261 provides that, for corner lots such as the subject site, the portion of a side lot line beyond 100 feet from the street line that it intersects shall be considered a rear lot line and a rear yard with a minimum depth of 20 feet shall be provided where the rear lot line coincides with an adjoining rear lot line; therefore, a rear yard with a minimum depth of 20 feet and a minimum width of 10.5 feet is required at the southeast corner of the site; and

WHEREAS, the applicant states that the Rear Yard, with a depth of 39.5 feet and a width of 7.5 feet, complies with the required depth of 20 feet but does not comply with the required width of 10.5 feet under ZR § 33-261, and therefore violates MDL § 26(5); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in 1903; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts and MDL § 26(5) specifically relates to the minimum dimensions of rear yards; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

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WHEREAS, the applicant notes that the proposed conversion of the existing building to hotel use will require extensive and costly interior alterations to the building in order to convert its existing office uses into a modern, code-compliant hotel, as well as the construction of a required loading dock; and

WHEREAS, the applicant states that, in order for all of the hotel units in the Proposed Hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), significant portions of the building would have to be demolished and significant modifications to the layout of the Proposed Hotel would have to be made; and

WHEREAS, the applicant submitted two alternate plans for a complying hotel (designated as Schemes B and C); and

WHEREAS, in the Scheme B design, portions of the existing building would have to be demolished in order to create a court with an area of 1,227 sq. ft. to comply with MDL § 26(7), and hotel units at the eastern end of the building would have to be reconfigured so that none of the hotel units have required windows that open onto the non-complying Rear Yard; and

WHEREAS, the applicant states that, under Scheme B, the demolished floor area would be offset through the construction of a new 19<sup>th</sup> floor at the top of the building, which would contain ten hotel units; however, the Scheme B design would still yield only 241 hotel units as compared to the 261 hotel units in the Proposed Hotel; and

WHEREAS, the Scheme C design is similar to the Scheme B design in that it would create a complying court through a significant amount of building demolition and it would reconfigure the hotel units so that none of the units have required windows that open onto the non-complying Rear Yard; however, in Scheme C a 19<sup>th</sup> floor would not be added to the existing building, and the resultant hotel building would yield only 231 hotel units as compared to the 261 hotel units in the Proposed Hotel; and

WHEREAS, the applicant submitted a letter from a consulting engineer describing the structural work that would be required in order to create the complying court shown in the Scheme B and Scheme C drawings; and

WHEREAS, specifically, the letter submitted by the applicant reflects that the work required to create the complying court would include (1) installation of new transfer and connecting beams at the underside of the fourth floor; (2) installation of new steel columns from the fourth floor to the roof; (3) welding stiffener plates to the existing beam webs at each floor; (4) demolition of existing floor slabs from the fifth floor to the roof; (5) installation of new steel beams at each floor; (6) installation of new floor slabs from the fifth floor to the roof; (7) demolition of existing exterior masonry walls from the fourth floor to the roof; (8) removal of the existing steel framing within the enlarged court and construction of a new exterior façade; and (9) shoring and bracing of the existing building throughout the construction; and

WHEREAS, the applicant also submitted a cost summary prepared by the construction manager, which estimates the total costs and costs per hotel unit for the Proposed Hotel and Schemes B and C; and

WHEREAS, the cost summary submitted by the applicant reflects that, due to the additional work required under Schemes B and C, the per-unit cost of Scheme B would exceed the per-unit cost of the Proposed Hotel by more than \$27,000, while the per-unit cost of Scheme C would exceed the per-unit cost of the Proposed Hotel by more than \$21,000; and

WHEREAS, the applicant also submitted an estimate of the revenues that would be generated by the Proposed Hotel and Schemes B and C, which reflects that the Scheme B and C designs, which provide fewer hotel units, would generate substantially lower annual revenues than the Proposed Hotel; and

WHEREAS, at hearing, the Board questioned whether there is a separate requirement that a minimum distance of 30 feet be maintained between a legally required window and an opposite facing window or wall and, if so, whether such a requirement would necessitate an additional waiver; and

WHEREAS, in response, the applicant states that apart from MDL § 26(7), there is no separate provision of the MDL that imposes a 30-ft. window-to-wall or window-to-window requirement for the subject building, and therefore MDL §§ 26(7) and 26(5) are the only sections of the MDL that need to be varied; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) and 26(5) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the existing building is more than 100 years old and is obsolete for modern office uses; and

WHEREAS, the applicant notes that the subject site is a corner lot and the majority of hotel units will have required windows that open onto either Maiden Lane or Broadway, thereby complying with the requirements of the MDL; and

WHEREAS, the applicant states that 75 hotel units will have windows that open onto the Court, which has an area of 886 sq. ft.; and

WHEREAS, the applicant represents that, although the Court does not meet the requirements of MDL § 26(7), the occupants of these hotel units will still receive ample light and air, as all of the required windows that open onto the Court will be located 28.5 feet from an opposite facing wall, which very nearly complies with the 30-ft. window-to-wall requirement of MDL § 26(7), and the Court lies directly adjacent to another three-sided court with an area of 479 sq. ft. that is formed by the 15-story building located immediately to the south, such that the two adjacent open areas, in effect, form a single court with an area of 1,364 sq. ft., which would exceed the 1,200 sq. ft. requirement of MDL § 26(7); and

WHEREAS, the applicant states that only 15 of the units in the Proposed Hotel, one on each hotel floor, will have required windows that open onto the Rear Yard, which has an area of 296 sq. ft.; and

WHEREAS, the applicant represents that, although the

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Rear Yard does not meet the requirements of MDL § 26(5) and ZR § 33-261, it has a greater than required depth of 39.5 feet and a minimally non-complying width of 7.5 feet, and as such the area of the Rear Yard is substantially greater than the area of a required rear yard; and

WHEREAS, the applicant further states that the southeast corner of the Rear Yard abuts a building with a height of only two stories, while the units in the Proposed Hotel will be located on floors four through 18; thus, a significant amount of light and air will reach the Rear Yard and the hotel units that face it; and

WHEREAS, based on the above, the Board finds that the proposed variance to the court requirements of MDL § 26(7) and the rear yard requirements of MDL § 26(5) and ZR § 33-261 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the court requirements of MDL § 26(7) and the rear yard requirements of MDL § 26(5) and ZR § 33-261 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Manhattan Borough Commissioner, dated November 10, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received December 8, 2011" - five (5) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

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

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

Adopted by the Board of Standards and Appeals, February 28, 2012.

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## 659-76-A

APPLICANT –Walter T. Gorman, P.E., for Daniel and Lauren Mirkin, owners.

SUBJECT – Application November 15, 2011 – Amendment to an approved Appeal to the Building Code to continue a UG 4 second floor occupancy in a wood frame structure which expired on November 9, 2011. C1-3 /R5B zoning district.

PREMISES AFFECTED – 253 Beach 116<sup>th</sup> Street, west side, 240' south of Newport Avenue, Block 16212, Lot 19, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

## THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for decision, hearing closed.

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## 243-09-BZY

APPLICANT – Mirza M. Rahman, for South Jamaica Property, LLC, owner.

SUBJECT – Application December 2, 2011 – Extension of Time (§11-332) to complete construction of a minor development and obtain a Certificate of Occupancy commenced under the prior R6 Zoning district. R4-1 Zoning district.

PREMISES AFFECTED – 87-12 175<sup>th</sup> Street, corner of 175<sup>th</sup> Street and Warwick, Block 9830, Lot 32, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mirza M. Rahman.

## THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 10 A.M., for decision, hearing closed.

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## 206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla and Philip Rampulla.

For Opposition: Carol Donovan and Richard Herb.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for continued hearing.

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## 233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between

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Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61(tent),  
Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to March 20,  
2012, at 10 A.M., for continued hearing.

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## 86-11-A

APPLICANT – Cozen O’Connor, for Perlbinders Holdings,  
LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the  
Department of Buildings’ revocation of an approval to  
permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2<sup>nd</sup> Avenue, northwest  
corner of East 36<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Block 917, Lot  
21, 24-31, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Hornstein and Dave Kissoon.

For Opposition: Lisa M. Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24,  
2012, at 10 A.M., for decision, hearing closed.

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## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-  
516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal  
challenging the Department of Buildings’ determination to  
deny the reinstatement of permits that allowed an  
enlargement to an existing residential building. R7B zoning  
district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south  
side of East 6th Street, between Avenue A and Avenue B,  
Block 401, Lot 17, 18, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: Alice Baldwin.

**ACTION OF THE BOARD** – Laid over to March 27,  
2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 28, 2012 1:30 P.M.

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

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## ZONING CALENDAR

### 47-11-BZ

#### CEQR #11-BSA-082Q

APPLICANT – Law Office of Fredrick A. Becker, for USA  
Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-  
21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*)  
with dormitories, contrary to use (§22-13), floor area (§§23-  
141 and 24-111), side setback (§24-551) and parking  
regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25<sup>th</sup> Street, west side  
of Bay 25<sup>th</sup> Street, between Bayswater Avenue and Healy  
Avenue. Block 15720, Lot 67, Borough of Queens.

#### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough  
Commissioner, dated April 8, 2011, acting on Department of  
Buildings Application No. 420166938, reads in pertinent part:

Proposed use is contrary to ZR 22-13.

Proposed floor area is contrary to ZR 23-141 and  
24-111.

Proposed required side setback for tall buildings  
in low bulk districts is contrary to ZR 24-551; and

WHEREAS, this is an application under ZR § 72-21, to  
permit, within an R2 zoning district, the construction of a two-  
and three-story yeshiva and dormitory building (Use Group 3)  
which does not conform to the underlying use regulations and  
does not comply with zoning requirements related to floor area  
and side setback, contrary to ZR §§ 22-13, 23-141, 24-111, and  
24-551; and

WHEREAS, a public hearing was held on this  
application on September 20, 2011, after due notice by  
publication in the *City Record*, with continued hearings on  
October 25, 2011, December 6, 2011, and January 24, 2012,  
and then to decision on February 28, 2012; and

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

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Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommended disapproval of an earlier iteration of the application; and

WHEREAS, Queens Borough President Helen Marshall recommended disapproval of an earlier iteration of the application, citing concerns that the building would be out of scale with the character of the surrounding neighborhood and the increased pedestrian and vehicular traffic that would be generated by the community facility; and

WHEREAS, City Councilmember James Sanders, Jr. provided testimony expressing support for the yeshiva but opposition to the proposed dormitory use based on concerns with the number of beds in the facility, parking, and the impact on the rising water table in the surrounding area; and

WHEREAS, representatives of the Bayswater Civic Association and certain members of the community provided testimony in opposition to this application (hereinafter, the "Opposition"), raising the following primary concerns: (1) the incompatibility of the proposed facility with the surrounding neighborhood; (2) the potential for increased traffic; (3) insufficient parking in the area; (4) the potential for excessive noise generated by the students residing in the dormitory rooms; (5) the proposal otherwise does not satisfy the findings of ZR § 72-21; (6) the proposed use does not qualify for educational deference; and (7) there are problems with the Board's process; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of Yeshiva Zichron Aryeh (the "Yeshiva"), a not for profit educational institution; and

WHEREAS the site is located on the west side of Bay 25<sup>th</sup> Street between Bayswater Avenue and Healy Avenue, within an R2 zoning district; and

WHEREAS, the site consists of an irregularly-shaped lot with approximately 95 feet of frontage on Bay 25<sup>th</sup> Street and a total lot area of 35,819 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed dormitory use is not permitted in the subject R2 zoning district and the proposed bulk exceeds the complying building envelope for a conforming use, thus the applicant seeks a variance for the proposed building; and

WHEREAS, the applicant proposes to construct a three-story yeshiva and dormitory building with the following complying parameters: lot coverage of 35.5 percent (a maximum lot coverage of 55 percent is permitted); a roof height of 39'-6" (as governed by sky exposure plane regulations); a front yard with a depth of 63'-8 11/16" (a front yard with a minimum depth of 15'-0" is required); two side yards with minimum widths of 13'-4" each (two side yards with minimum widths of 8'-0" each are required); a rear yard with a depth of 30'-0" (a rear yard with a minimum depth of 30'-0" is required); and 28 accessory off-street parking spaces (a minimum of 27 spaces are required); and

WHEREAS, however, the proposed building results in the following non-compliances: a floor area of 35,476 sq. ft. (the maximum permitted floor area is 17,909.6 sq. ft. ); an FAR

of 0.99 (the maximum permitted FAR is 0.50); a side setback of 15'-0" above a height of 35'-0" along the northern side of the building (a minimum side setback of 24'-4 1/16" is required); and a side setback of 15'-0" above a height of 35'-0" along the southern side of the building (a minimum side setback of 25'-0 15/16" is required); and

WHEREAS, the applicant originally proposed a building with a floor area of 39,286 sq. ft. (1.1 FAR), side setbacks of 14'-6" each, a roof height of 44'-6", and 13 accessory off-street parking spaces, which would have necessitated an additional waiver for less than the minimum number of required parking spaces; and

WHEREAS, however, in response to concerns raised by the Board and the Opposition, the applicant revised the proposal several times during the course of the hearing process, ultimately reducing the degree of non-compliance as to floor area and side setback, reducing the roof height of the building to 39'-6", and providing a complying number of parking spaces; and

WHEREAS, the applicant states that the proposed building provides the following uses: (1) a gymnasium, dining room, pool, dairy kitchen, meat kitchen, and mechanical rooms at the sub-cellar level; (2) a synagogue, exercise room, music room, mechanical room, and storage at the cellar level; (3) a science laboratory, computer room, classrooms, and offices at the first floor; (4) a Bais Medrash, library, classrooms, and offices at the second floor; and (5) a student lounge, laundry room, and 15 dormitory rooms at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; and (2) providing an on-site dormitory to allow for an integrated living and learning environment; and

WHEREAS, the applicant states that the Yeshiva provides education from high school (grades nine through 12) through graduate school and currently operates out of several separate buildings in the surrounding neighborhood, which combine to accommodate its enrollment of 135 students with 49 students in dormitory rooms, and approximately 30 staff members; and

WHEREAS, the applicant represents that there are also many students on a waiting list for the Yeshiva; and

WHEREAS, the applicant states that the Yeshiva's existing facilities have been unable to keep up with the needs of the student body and they have been renting additional space in a number of buildings in the surrounding neighborhood; and

WHEREAS, the applicant represents that for the past two years the existing dormitory buildings the Yeshiva rents have been at capacity, and the Yeshiva is in the process of finding additional space for dormitories for the current school year; and

WHEREAS, in addition to the difficulties posed by operating the Yeshiva out of multiple buildings scattered throughout the neighborhood, the applicant states that the existing facilities are deficient for the following reasons: the existing dining area is not large enough to accommodate the entire student body; the kitchen does not have adequate space to prepare the necessary amount of food; the main college study hall building is a rented facility that is shared with a

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synagogue, such that they do not always have access to the space; there is a lack of office space; and two classes currently have to meet in the hallway due to space constraints; and

WHEREAS, the applicant represents that the Yeshiva anticipates increasing its enrollment within the next two years to 220 students, with 45 associated staff members; and

WHEREAS, the applicant states that in order to accommodate the student population and provide a program that will meet their needs, the Yeshiva requires six high school classrooms, four undergraduate/graduate classrooms, a library, science laboratory, a computer room, prayer space, physical education space, and dormitory space; and

WHEREAS, during the hearing process, the Board asked the applicant to explain the need for the proposed dormitory rooms, which the applicant claims are a component of the programmatic needs; and

WHEREAS, in response, the applicant states that the dormitory rooms are necessary to meet the programmatic needs of the Yeshiva due to the rigorous and intensive course of study followed by the students; and

WHEREAS, specifically, the applicant states that the high school portion of the Yeshiva provides a dual curriculum in which each student must complete a full course load of secular studies and a full course load of religious studies, which extends into the evening hours and necessitates sleeping accommodations be provided for certain students; and

WHEREAS, the applicant further states that undergraduate students begin their day with morning prayers at 7:45 a.m., followed by a day filled with classes and studying until their final evening prayer begins at 10:00 p.m., with breaks only provided for meals; and

WHEREAS, the applicant states that between the end of evening prayers and the beginning of morning prayers is approximately nine hours, and in this limited time the students must sleep, complete any remaining studies, and prepare for their day; and

WHEREAS, the applicant represents that because of this schedule students require immediate access to their living areas in order to make effective use of the limited time they have outside of classes and study sessions; and

WHEREAS, the applicant further represents that locating the Yeshiva and the dormitories in the same building is integral to the students learning due to the unbroken continuance of focus that occurs when the students do not leave the facility, and this immersion allows the students to more fully devote themselves to both their religious and secular studies without distractions; and

WHEREAS, the applicant also submitted a list of other yeshivas that provide dormitory beds for their students in comparable facilities; and

WHEREAS, the applicant represents that a complying building at the site would not provide an adequate amount of space for the current number of students and faculty or for the anticipated growth in enrollment; and

WHEREAS, specifically, the applicant submitted plans for a complying building which would result in the elimination of two high school classrooms, one graduate classroom, the science laboratory, the Bais Medrash, and all 15 dormitory

rooms; and

WHEREAS, the applicant also submitted plans for a lesser variance scenario which would request the use waiver but comply with all bulk requirements; and

WHEREAS, the applicant states that the lesser variance scenario would result in the elimination of the Bais Medrash, all graduate classrooms, a science room and eight dormitory rooms, and would not provide a sufficient amount of space to meet the needs of the Yeshiva; and

WHEREAS, the applicant states that the requested floor area and side setback waivers are necessary to accommodate the space needs associated with the projected student body, and the use waiver is necessary to provide dormitory space within the proposed building; and

WHEREAS, as to the floor area, the applicant states that without the floor area waiver approximately half of the proposed floor area would be lost, and the resultant building would be inadequate to provide sufficient classroom or program space to meet the needs of the Yeshiva; and

WHEREAS, as to the side setbacks, the applicant states that the setback waivers are required to achieve floor plates that accommodate the necessary number of beds in the dormitory, as without such waivers the Yeshiva could not provide the 58 beds necessary to accommodate the projected enrollment; and

WHEREAS, as to the use waiver, the applicant notes that it could have applied for a special permit for the subject site pursuant to ZR § 73-122 which would authorize the proposed dormitory use in the subject R2 zoning district, but a variance would still be required to construct the proposed building due to the requested bulk waivers; and

WHEREAS, the applicant submitted evidence in support of its claim that it could satisfy the findings required for the special permit under ZR § 73-122, provided the Board allowed the dormitory FAR to be calculated independently of the FAR for the remainder of the building; and

WHEREAS, the applicant states that only the proposed variance building can accommodate the Yeshiva's projected enrollment and satisfy the programmatic needs and space requirements of its students; and

WHEREAS, based upon the above, the Board agrees that the cited programmatic needs are legitimate and have been documented with substantial evidence; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in

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developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposal is in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the use of the site as a yeshiva is permitted as-of-right in the subject R2 zoning district, and dormitory use is permitted in the subject R2 zoning district by special permit under ZR § 73-122, which the applicant states is an acknowledgment that the use itself can be compatible with surrounding uses in the R2 zoning district; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized predominantly by single-family homes ranging in height from one-and-one-half to three stories; and

WHEREAS, accordingly, the applicant states that the height of the proposed two- and three-story building complies with the underlying district regulations and will fit within the character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the proposed building will comply with all yard requirements for a community facility building in the subject R2 district, and the building will be significantly set back from the street, providing a front yard with a depth of 63'-8 11/16", more than four times the depth required in the underlying zoning district; and

WHEREAS, the applicant notes that the building is also designed to be lower in the front, with a front setback of more than 30 feet above the second floor, to make the building more consistent with the character of the surrounding neighborhood; and

WHEREAS, the applicant further notes that the building will also be screened from surrounding residences by providing a significant amount of landscaping around the perimeter of the site and in the front yard to create a break in the façade; and

WHEREAS, as noted above, the Opposition made a number of arguments and observations regarding the instant application; and

WHEREAS, as to the Opposition's argument that the scale of the building is out of context with the surrounding neighborhood, the applicant notes that the subject site is larger than the surrounding developed properties and can support a building that is larger than other buildings in the immediate vicinity; and

WHEREAS, the applicant further states that the proposed building complies with all underlying bulk regulations aside from FAR and side setbacks, and that the complying height and yards, in conjunction with the buffering provided by the proposed landscaping result in a building that fits within the context of the surrounding neighborhood; and

WHEREAS, further, the Board finds that the applicant has credibly established that the proposed dormitory use and the requested bulk waivers are necessary to provide a facility that can satisfy the Yeshiva's programmatic needs; and

WHEREAS, as to the Opposition's concerns about traffic impact, the applicant notes that the proposed building will serve an existing yeshiva that already operates in the surrounding area, and states that the increased enrollment at the proposed building will not result in a significant impact on transit or pedestrian traffic; and

WHEREAS, the applicant provided a survey analyzing the anticipated difference in vehicle trips between the current operation of the Yeshiva and the operation under the proposed building, which indicates that of the 265 students and staff at the proposed facility, 58 students will live in the dormitory rooms and will not travel to or from the site, and it is anticipated that of the remaining 207 students and staff, 77 people will walk, 75 people will drive, 40 people will arrive by school van, 14 people will be dropped off/picked up, and one person will arrive by public transportation; and

WHEREAS, the applicant states that the anticipated transportation to and from the site does not exceed the thresholds listed in the CEQR manual, and therefore the proposed use will not result in a significant impact on traffic; and

WHEREAS, as to the Opposition's concerns regarding parking, the Board notes that the applicant revised its plans to provide 28 parking spaces, which complies with the requirements of the Zoning Resolution; and

WHEREAS, as to the Opposition's concern that the students residing at the proposed facility will create excessive noise in the predominantly residential area, the applicant states that noise attenuation will be achieved by insulating the exterior walls of the building and installing double pane low E windows equipped with shades; and

WHEREAS, the applicant states that the proposed building will also be screened from adjacent residences by providing landscaping around the perimeter and in front of the building, and minimizing exterior lighting by utilizing directional fixtures focused on the site and short post lighting in lieu of large pylon lighting when feasible; and

WHEREAS, the Opposition also made other arguments as to the Board's findings, process, and educational deference, which the Board has considered and does not find persuasive; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development in conformance with zoning would meet the programmatic needs of the Yeshiva at the site; and

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

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, as noted above, the applicant originally

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proposed to construct a building with a floor area of 39,286 sq. ft. (1.1 FAR), a roof height of 44'-6", and 13 accessory off-street parking spaces; and

WHEREAS, in response to concerns raised by the Board and the Opposition during the course of the hearing process, the applicant reduced the size of the building in terms of FAR, height, and side setbacks, in order to create a more compatible building envelope, and revised the parking layout to provide a complying number of accessory parking spaces; and

WHEREAS, therefore, the Board agrees that the requested relief is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA082Q, dated January 6, 2012; and

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

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a three-story yeshiva and dormitory building which does not conform to the underlying use regulations and does not comply with zoning requirements related to floor area and side setback, contrary to ZR §§ 22-13, 23-141, 25-111, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 25, 2012" – (12)

sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 35,476 sq. ft. (0.99 FAR); a side setback of 15'-0" above a height of 35'-0" along the northern side of the building; a side setback of 15'-0" above a height of 35'-0" along the southern side of the building; a roof height of 39'-6"; lot coverage of 35.5 percent; a front yard with a depth of 63'-8 11/16"; two side yards with minimum widths of 13'-4" each; a rear yard with a depth of 30'-0"; and 28 accessory off-street parking spaces, as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT no commercial catering is permitted within the building or on-site;

THAT the occupancy of the dormitory will be limited to 58 beds;

THAT landscaping will be provided and maintained as indicated on the BSA-approved plans;

THAT all exterior lighting will be directed downward and away from adjacent residential uses;

THAT the exterior walls of the building will be insulated and double pane low E windows will be installed;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 28, 2012.

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## 66-11-BZ

### CEQR #11-BSA-096K

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*) larger than 10,000 square feet, contrary to use regulations (§42-12). M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3<sup>rd</sup> Street, 3<sup>rd</sup> Avenue, 4<sup>th</sup> Street Basin and Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jerry Johnson.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,



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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough  
Commissioner, dated May 10, 2011, acting on Department of  
Buildings Application No. 301923346, reads in pertinent part:

Food store (UG 6) greater than 10,000 sf in an M2-1  
district is not permitted pursuant to Section ZR 42-  
12, referred to the Board of Standards and Appeals  
for determination; and

WHEREAS, this is an application under ZR § 72-21, to  
permit, in an M2-1 zoning district, the construction of a two-  
story food store (Use Group 6) in excess of 10,000 sq. ft.,  
which does not conform to district use regulations, contrary to  
ZR § 42-12; and

WHEREAS, a public hearing was held on this  
application on December 13, 2011 after due notice by  
publication in *The City Record*, with a continued hearing on  
January 24, 2012, and then to decision on February 28, 2012;  
and

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

WHEREAS, Community Board 6, Brooklyn,  
recommends approval of this application, with the following  
conditions: (1) a follow-up traffic study be conducted within  
a three-quarter mile radius of the site one year after the store  
opens; (2) the food store closes by 10:00 p.m.; and (3) the  
Third Avenue and 3<sup>rd</sup> Street frontages be treated with  
windows to create a more inviting design and encourage  
pedestrian traffic; and

WHEREAS, City Council Member Sara M. Gonzalez  
provided testimony in support of this application; and

WHEREAS, City Council Member Diana Reyna  
provided testimony expressing concern about the effect of  
the proposed development on industrial uses in the  
surrounding area; and

WHEREAS, the applicant submitted a letter from  
Borough President Marty Markowitz in support of the  
proposed food store; and

WHEREAS, representatives of the Brooklyn Chamber  
of Commerce and the Gowanus Alliance provided testimony  
in support of this application; and

WHEREAS, representatives of the Gowanus Canal  
Community Advisory Group provided testimony expressing  
its concern that the proposal be executed in a manner that is  
compatible with the Environmental Protection Agency’s  
(“EPA”) Superfund cleanup process, and requesting that the  
Board postpone its decision until the EPA releases its  
decision for the Gowanus Canal cleanup program; and

WHEREAS, representatives of the Gowanus Canal  
Conservancy provided testimony requesting that the  
applicant take measures to ensure that the development of  
the site is consistent with the character of the Gowanus  
neighborhood and the goals the City has identified for the  
development of the waterfront in its Vision 2020

Comprehensive Waterfront Plan; and

WHEREAS, representatives of the Gowanus Institute,  
the Gowanus Canal Conservancy, the Friends and Residents  
of Greater Gowanus, the Southwest Brooklyn Industrial  
Development Corporation, the Sierra Club, and certain  
members of the community provided oral and written  
testimony in opposition to this proposal (hereinafter, the  
“Opposition”); and

WHEREAS, the Opposition raised the following  
primary concerns: (1) the proposal does not satisfy the  
findings of ZR § 72-21, primarily because the site is not  
unique, the site could realize a reasonable return without the  
requested variance, and the proposed food store in excess of  
10,000 sq. ft. would alter the character of the neighborhood;  
(2) the proposed food store will be detrimental to the  
surrounding manufacturing and artistic community; (3) the  
proposed food store will not create the quantity or quality of  
jobs that could be created by an as-of-right manufacturing  
use; (4) the proposal will increase traffic in the surrounding  
neighborhood; and (5) the proposal has the potential to  
disrupt the EPA’s cleanup program for the Gowanus Canal;  
and

WHEREAS, the subject site is located on an irregularly-  
shaped lot comprising the entire block bounded by Third  
Avenue to the east, 3<sup>rd</sup> Street to the north, the 4<sup>th</sup> Street Basin to  
the south, and the Gowanus Canal to the west, within an M2-1  
zoning district; and

WHEREAS, the site is a single zoning lot comprising  
seven tax lots (tax lots 1, 7, 16, 19, 23, 30 and 32), with  
approximately 337 feet of frontage along Third Avenue, 635  
feet of frontage along 3<sup>rd</sup> Street, 666 feet of frontage along the  
4<sup>th</sup> Street Basin, and 175 feet of frontage along the Gowanus  
Canal, with a total lot area of 185,163 sq. ft.; and

WHEREAS, the site is currently a primarily vacant lot,  
with the exception of a two-story former office building with a  
floor area of 2,940 sq. ft. (.02 FAR) constructed in 1872-1873  
which is designated as an individual New York City Landmark  
(the “Landmark Building” or “the Landmark Building Site”) located on a portion of tax lot 7 at the corner of 3<sup>rd</sup> Street and  
Third Avenue; and

WHEREAS, the applicant proposes to construct a two-  
story building to be occupied by a food store (Use Group 6)  
with a floor area of 56,470 sq. ft. (0.30 FAR) and a rooftop  
greenhouse (Use Group 17) with a floor area of 19,400 sq. ft.  
(0.10 FAR), for a total floor area of 75,870 sq. ft. (0.41 FAR),  
and with 246 accessory off-street parking spaces; and

WHEREAS, the applicant states that the proposed  
building will be located on the northeast corner of the site  
adjacent to the east and south sides of the Landmark Building  
Site; and

WHEREAS, the applicant further states that the proposed  
building will provide loading docks on the Third Avenue  
frontage and a waterfront public access area along the entire  
waterfront edge of the property adjacent to the 4<sup>th</sup> Street  
Basin/Gowanus Canal (the “Shore Public Walkway”), which  
will require a separate application at the Department of City  
Planning (“DCP”); and

WHEREAS, although the proposed building’s FAR

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would be permitted for a conforming use, the applicant seeks a use variance because food stores in excess of 10,000 sq. ft. are not permitted in the subject M2-1 zoning district; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site in conformance with the underlying zoning regulations: (1) there is significant soil contamination on the site; (2) the site consists of poor load bearing soils; (3) the site has a high water table; (4) there is a significant amount of water frontage on the site; and (5) there are varying elevations on the site; and

WHEREAS, as to the contamination on the site, the applicant states that the site was historically developed with noxious industrial uses which have resulted in significant soil contamination at the site; and

WHEREAS, the applicant notes that the subject site is the only property within the existing M2-1 district to be included within the New York State Department of Conservation's ("DEC") Brownfield Cleanup Program due to the prior contamination on the site, which is a clean-up program designed to ensure that contaminated sites are cleaned up under governmental oversight utilizing remedies that are protective of human health and the environment; and

WHEREAS, the applicant notes that the Gowanus Canal has been placed on the EPA's Superfund National Priorities List, which is a federal program designed to locate, investigate, and clean up the most environmentally hazardous sites nationwide; and

WHEREAS, the applicant states that the Phase I and Phase II Environmental Site Assessments found evidence of contamination and underground storage tanks on tax lots 1, 7, 16 and 19, with less severe soil contamination on tax lots 23, 30 and 32; and

WHEREAS, the applicant further states that due to the presence of contamination, significant remedial actions have been or will be undertaken at the site, including: (1) removal and off-site disposal of underground storage tanks; (2) excavation and off-site disposal of contaminated soil; (3) construction and maintenance of a composite cover system consisting of a demarcation barrier beneath a two-ft. thick cover layer of clean crushed rock to prevent human exposure to the remaining contaminated soil at the site; and (4) installation of a chemical vapor barrier and slab pressurization system for the proposed building; and

WHEREAS, the applicant states that it will execute and record an Environmental Easement to restrict land use and prevent future exposure to contamination remaining at the site by (1) limiting the use and development of the property to commercial/industrial use; (2) complying with a DEC-approved Site Management Plan; (3) restricting the use of ground water as a source of potable or process water; and (4) requiring the property owner to complete and submit a periodic certification of industrial and engineering controls to DEC; and

WHEREAS, the applicant further states that it will develop and implement a Site Management Plan for long term management of remaining contamination as required by the Environmental Easement, which includes plans for: (1) institutional and engineering controls; (2) monitoring; (3)

operation and maintenance; and (4) reporting; and

WHEREAS, the applicant represents that the above-mentioned remedial actions required to clean up the contamination on the site result in significant premium costs for any development on the site; and

WHEREAS, as to the poor load bearing soil on the site, the applicant submitted a geotechnical report stating that soil borings taken at the site reflect that the soil is composed of urban fill to depths of seven to 29 feet below the ground surface, with eight to 26 feet of organic deposits below the urban fill layer consisting of organic silt and clay with shells, fibers, and peat observed, and a layer of sand and silt and sand and gravel below the organic deposits; and

WHEREAS, the geotechnical report further states that bedrock was not encountered in any of the borings; and

WHEREAS, the applicant states that the uncontrolled fill and organic deposits are not suitable for support of the building loads, necessitating deep pile foundations which must penetrate the poor surface soils to transfer the building loads to the underlying sand and gravel; and

WHEREAS, the geotechnical report recommends a foundation system for the subject site that consists of driven friction piles extending into competent soils below the organic stratum, with drilled piles within 30 feet of the Landmark Building; and

WHEREAS, the applicant states that the specialized foundation system consisting that is necessitated by the poor soil conditions significantly increases the cost of any development on the site; and

WHEREAS, as to the high water table, the geotechnical report reflects that groundwater across the site ranges from an elevation of 4.8 feet to 7.1 feet, and the site is within the 100-year flood zone; and

WHEREAS, the applicant states that these conditions would result in significant dewatering costs associated with the as-of-right food store development, which consists of a building limited to 10,000 sq. ft. of food store floor area above grade with an additional 39,000 sq. ft. of floor space located below grade; and

WHEREAS, specifically, the geotechnical report states that the as-of-right design with a cellar at or below the flood zone would require waterproofing, floodproofing, and a foundation designed to resist uplift forces; and

WHEREAS, the geotechnical report further states that continuous dewatering would be necessary for the as-of-right food store in order to bring the groundwater down to a level sufficiently below subgrade and to permit proper compaction of the subgrade prior to the placement of foundation concrete, and that due to the subsurface contamination on the site, an on-site treatment system will be necessary to treat and remove groundwater before it is discharged to the Gowanus Canal/4<sup>th</sup> Street Basin; and

WHEREAS, the applicant notes that the proposed building will avoid the costs associated with the high water table and location within the 100-year flood zone by setting the building eight feet above the 100-year flood elevation; as a result, the applicant is unable to locate any floor space in the cellar, where it would not contribute to floor area calculations;

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and

WHEREAS, as to the amount of water frontage on the site, the applicant states that site is located immediately adjacent to the Gowanus Canal to the west and the 4<sup>th</sup> Street Basin to the south, with a total of 860 linear feet of water frontage; and

WHEREAS, the applicant states that there are increased development costs along the waterfront from Third Avenue to 3<sup>rd</sup> Street including the construction and maintenance of the required Shore Public Walkway, which provides public access to 860 linear feet of water frontage, and the removal of 300 linear feet of deteriorating bulkhead and its replacement with DEC-mandated soft shoreline (rip rap); and

WHEREAS, as to the need to replace a portion of the bulkhead, the applicant states that approximately 300 feet of the 4<sup>th</sup> Street Basin/Gowanus Canal frontage nearest the Third Avenue bridge contained a non-functioning bulkhead, and this portion of the site was determined to be a tidal wetlands adjacent area, requiring a DEC permit to develop the site; and

WHEREAS, the applicant further states that the DEC Tidal Wetlands Permit requires the creation of a 15-ft. rip rap slope to replace the non-functional bulkhead along the waterfront; the applicant notes that a temporary rip rap slope has already been created and the final slope will be constructed during the construction of the proposed building; and

WHEREAS, the applicant represents that the 15-ft. rip rap slope also restricts the development of the site by pushing the area where the southern side of the building can be located by an additional 15-ft. to the north, thus reducing the lot area for the footprint of the building; and

WHEREAS, accordingly, the applicant states that there are significant costs associated with any development on the site due to its large size and the extent of water frontage on the site; and

WHEREAS, as to the change in elevation across the site, the applicant states that there is a grade change of approximately 12 feet from the southeast corner of the site to the northwest corner of the site; and

WHEREAS, specifically, the applicant states that the elevations on the site range from approximately eight feet near the 3<sup>rd</sup> Street bridge to approximately 20 feet near the Third Avenue bridge; and

WHEREAS, the applicant states that the site is bounded by streets on the north and east sides and a public waterway on the south and west sides and it abuts two bridges, the Third Avenue bridge that spans above and over the end of the 4<sup>th</sup> Street Basin and the 3<sup>rd</sup> Street bridge and gatehouse, a drawbridge spanning over the Gowanus Canal, and that these bridges and the grade elevations along the streets abutting the site and the Gowanus Canal result in the substantial grade change of approximately 12 feet across the site; and

WHEREAS, the applicant states that the location of the bridges contributes to the unique grading of the site because the Third Avenue bridge (located to the southeast of the site) is high relative to the canal while the 3<sup>rd</sup> Street bridge (located to the northwest of the site) is low relative to the canal; and

WHEREAS, the applicant further states that the location of the bridges is significant due to the additional construction

costs associated with constructing near the bridge structures, and because the style of the bridge on Third Avenue is one of the reasons the elevations of the street at that location are so high relative to the surrounding area; and

WHEREAS, the applicant represents that the site conditions require that the building be located on the eastern end of the zoning lot, as the western end of the site cannot accommodate the building because loading and deliveries would not be permitted on the south and west sides due to water frontage, the 3<sup>rd</sup> Street bridge approach would preclude the use of the western end of 3<sup>rd</sup> Street, and loading and deliveries would conflict with the pedestrian and vehicular use if located in front of the building; and

WHEREAS, the applicant states that the 12-ft. elevation change also results in significant site planning and development challenges that contribute to the hardships on the site, as the building's finished floor elevation must be located near the high point of the site along Third Avenue to provide the required loading docks and proper deliveries, the site must then be graded appropriately to provide ADA compliant waterfront access for the Shore Public Walkway along the site's 860 feet of water frontage, and the interior of the site must also be graded to provide proper vehicular access to the parking area and pedestrian access to the front of the store; and

WHEREAS, the applicant states that the elevation differential is significant because it greatly increases the costs of the as-of-right food store development on the site; and

WHEREAS, specifically, the applicant states that the need to locate the building on the eastern side of the site requires the excavation of 16,712 cubic yards of soil for the as-of-right food store development because that scenario includes 39,000 sq. ft. of floor space located below grade while the other development scenarios do not locate floor space below grade; and

WHEREAS, the applicant further states that conducting the excavation on a site in the Brownfields Cleanup Program adds a significant premium to such work; and

WHEREAS, the applicant represents that the change in elevations on the site also results in the need for sheeting and shoring to support the surrounding streets, the cost of which is increased by the additional depth that results from locating the building on the eastern side of the site; and

WHEREAS, as to the uniqueness of the aforementioned physical conditions, the applicant submitted a land use map and chart which analyze the existing FAR, lot area, water frontage, occupancy, environmental contamination, groundwater elevation, adjacency to bridges, and elevation changes of 44 sites located along the canal in the subject M2-1 district; and

WHEREAS, the land use map reflects that, within the study area, the subject site is the only full block site that is primarily vacant, bounded on two sides by the Gowanus Canal/4<sup>th</sup> Street Basin, adjacent to two bridges with different elevations, occupied by a vacant landmark structure, and part of the Brownfields Cleanup Program; and

WHEREAS, the evidence submitted by the applicant reflects that 26 of the sites in the study area are underbuilt (defined by the study as sites developed with less than 25 percent of the permitted FAR); the subject site is significantly

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underbuilt with an FAR of .02; and

WHEREAS, the applicant states that of the 26 underbuilt sites analyzed, only one site had a greater percentage of its site perimeter occupied by water frontage than the subject site at 46.9 percent; and

WHEREAS, the applicant further states that the unusually high percentage of water frontage along the site's perimeter results in a high water table occupying a significant portion of the site; and

WHEREAS, the applicant represents that the high water table results in increased construction costs for the as-of-right food store, due to the dewatering costs associated with excavating for the below grade space; and

WHEREAS, in contrast, the proposed project would minimize construction costs related to the high water table as it would be located entirely above-grade, and its footprint is located at the northeast corner of the site, away from much of the water frontage; and

WHEREAS, as to the soil contamination on the site, the applicant represents that while other sites in the surrounding area have environmental contamination, the subject site is the only one in the M2-1 district that has been accepted into the Brownfield Cleanup Program due to prior contamination and has a cleanup that is regulated by DEC at significant expense; and

WHEREAS, the applicant further represents that the large size and the extent of water frontage exacerbate the hardships on the site due to the significant amount of lot area subject to environmental remediation and cleanup and the increased development costs along the waterfront from Third Avenue to 3<sup>rd</sup> Street; and

WHEREAS, as to the uniqueness of the elevation differentials and adjacency to bridges, the applicant provided an analysis of all the elevations applicable to properties abutting the canal and adjacent to bridges; and

WHEREAS, the analysis reflects that those properties abutting one bridge had differentiations in curb level averaging 2.5 feet while the only other property abutting two bridges had a differential of 1.2 feet, significantly less than the elevation differential of 12 feet on the subject site; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a seven-story as-of-right warehouse building with a floor area of 348,580 sq. ft.; (2) a two-story as-of-right warehouse building with a floor area of 196,716 sq. ft.; (3) an as-of-right food store with 10,000 sq. ft. of floor area located at the first floor, a 20,000 sq. ft. rooftop greenhouse, and an additional 39,000 sq. ft. of floor space located below grade, and with 258 accessory parking spaces; (4) a two-story as-of-right retail building with a floor area of 61,898 sq. ft. and with 224 accessory parking spaces; (5) a lesser variance scenario consisting of a one-story food store with 43,534 sq. ft. of floor area and 235 accessory parking spaces; and (6) the proposed two-story food store with 55,870 sq. ft. of floor area

located on the first and second floor, a 20,000 sq. ft. rooftop greenhouse, and with 246 accessory parking spaces; and

WHEREAS, the study concluded that the conforming and lesser variance scenarios would not result in a reasonable return, but that the proposed building would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze whether an as-of-right manufacturing use would be viable at the site; and

WHEREAS, in response, the applicant submitted a supplemental feasibility study which included (1) an as-of-right seven-story active manufacturing building with a floor area of 348,580 sq. ft.; and (2) an as-of-right two-story active manufacturing building with a floor area of 196,716 sq. ft.; and

WHEREAS, the revised study concluded that neither of the supplemental manufacturing scenarios would realize a reasonable return; and

WHEREAS, throughout the course of the hearing process, the Opposition contended that that the subject site is not unique and that the site could realize a reasonable return without the requested variance; and

WHEREAS, as noted above, the applicant has submitted sufficient evidence to establish that there are unique physical conditions on the site which result in unnecessary hardship and that development of the proposed food store is necessary to realize a reasonable return on the site; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the subject site is located in the Gowanus section of Brooklyn, an industrial area located between the more residential neighborhoods of Park Slope to the east, Carroll Gardens to the west, and Boerum Hill to the north, and the subject area is currently characterized by industrial properties, old factory and storage buildings, and the Gowanus Canal and its series of basins/extensions; and

WHEREAS, the applicant represents that the Gowanus area has experienced development pressure to redevelop for mixed uses and outdoor recreation in recognition of the Gowanus Canal as a unique waterfront resource, and while the designation of the Gowanus Canal as a Federal Superfund Site has lessened development pressure, the overall outlook for the long term future of this area is as a mixed-use community; and

WHEREAS, the applicant notes that a food store (Use Group 6) is a permitted use in the subject M2-1 zoning district, and it is only the proposed size in excess of 10,000 sq. ft. that requires a variance; further, the proposed rooftop greenhouse (Use Group 17) complies with bulk and use regulations; and

WHEREAS, the applicant further notes that a similarly sized food store could be developed on the subject site as-of-right, however, a significant portion of the building would have to be located below grade which would significantly increase

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construction costs; and

WHEREAS, the Board notes that a conforming commercial or manufacturing use would be entitled to an as-of-right floor area of 370,326 sq. ft. (2.0 FAR) on the site; therefore, although the subject M2-1 zoning district limits the size of food stores to a maximum of 10,000 sq. ft. of floor area, the proposed building, with a total floor area of 75,870 sq. ft. (0.41 FAR), is significantly below the bulk that is permitted on the site; and

WHEREAS, the applicant states that the building is designed as a mix of one- and two-story components with a hydroponic greenhouse located on the roof, and that the proposed building will be faced with repurposed brick to provide a more natural aged patina that will be in context with the existing industrial area; and

WHEREAS, the applicant further states that the proposed building will be located on the northeast corner of the site adjacent to the east and south sides of the Landmark Building Site, and the portions of the building immediately adjacent to the Landmark Building Site are setback to provide more distinctive views of the landmark from the street; and

WHEREAS, the applicant notes that the Shore Public Walkway will provide public access to 860 feet of the Gowanus Canal and 4<sup>th</sup> Street Basin which was previously inaccessible; and

WHEREAS, although the applicant is not seeking any bulk waivers for the proposal, the applicant notes that if the underlying M2-1 district bulk regulations were applied to the proposal, the bulk parameters would be well below the district maximums (as discussed above), but additional zoning relief would be required for the proposed parking and parking area design; and

WHEREAS, as to the parking, the applicant states that the proposal provides 246 accessory off-street parking spaces, and that 292 spaces would be required for the proposed building if the food store was permitted as-of-right; and

WHEREAS, the applicant submitted a traffic analysis which demonstrates that at peak weekday hours a maximum demand of 204 spaces is anticipated and at peak weekend hours a maximum demand of 166 spaces is anticipated; thus, the proposed 246 parking spaces are sufficient to meet the projected parking demand; and

WHEREAS, as to the parking area design, the applicant notes that in 2007 the City Planning Commission (“CPC”) adopted regulations for parking lots designed for commercial and community facility developments, which require open parking areas to comply with special screening and planting requirements for sustainable drainage design and beautification measures; and

WHEREAS, the applicant states that the special features of the subject site, including the location in the waterfront area with a tidal wetlands adjacent area, the elevation differentials, and other design requirements such as the Shore Public Walkway make it infeasible to provide the parking lot design in strict compliance with the CPC regulations while maintaining the proposed number of parking spaces; and

WHEREAS, accordingly, the applicant states that certain aspects of the parking area design, such as the planter sizes, the

buffer area design with respect to drainage requirements, and the location of fencing deviate from the regulations, but that the modifications will not impact the viability of the planting areas for sustaining trees and shrubbery per the CPC guidelines; and

WHEREAS, the applicant notes that following the January 24, 2012 action of the Landmarks Preservation Commission (“LPC”) which modified the boundaries of its 2006 designation of the Landmark Building Site, LPC review and approval of the proposal is not required; and

WHEREAS, by letter dated January 25, 2012, LPC confirmed that its review and approval of the proposal is not required; and

WHEREAS, during the hearing process, the Opposition raised arguments that the proposed food store in excess of 10,000 sq. ft. will have a detrimental impact on existing uses in the surrounding area, will not maximize job creation, will increase traffic concerns, and will disrupt the EPA’s cleanup of the Gowanus Canal; and

WHEREAS, as to the Opposition’s arguments regarding job creation, the applicant states that the site is currently vacant and employs only security guards, that the application materials demonstrate that no new manufacturing developments are viable, and that the proposed food store will provide employment opportunities to the local population on a site that currently sits fallow; and

WHEREAS, specifically, the applicant states that the proposed food store will create 300 construction jobs and approximately 450 new jobs when complete and fully staffed, 80 percent of which will be full time; and

WHEREAS, in response to the concerns raised about the proposal’s impact on traffic, the applicant submitted a traffic analysis which identified a series of measures that will be implemented to ensure that the proposed food store will not have a negative impact on the surrounding traffic network; and

WHEREAS, specifically, the applicant states that the proposed improvements, which were approved by the New York City Department of Transportation (“DOT”) on January 9, 2012, include the installation of a traffic signal at the intersection formed by 3<sup>rd</sup> Street and the driveway to the site, signal timing shifts at surrounding intersections, lane restriping, and the addition of new directional signage; and

WHEREAS, as to the Opposition’s arguments regarding the proposal’s impact on the Gowanus Canal and the EPA’s cleanup of the site, the applicant states that the site is regulated by DEC, all development plans have been reviewed and approved by DEC and DEP, and all work will be performed in accordance with DEC permits; thus, the proposed development will have no impact on the EPA’s cleanup of the site; and

WHEREAS, finally, in response to the Opposition’s contention that the proposed food store will have a detrimental effect on the existing industrial and artistic communities in the area, the applicant notes that food stores are permitted as-of-right in the subject M2-1 district, and represents that development of the proposed food store will be a benefit to the surrounding area, as it will provide fresh produce, meat and other grocery items to an area experiencing mixed-use growth and will service the nearby established residential neighborhoods; and

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WHEREAS, the Board has considered the Opposition's concerns related to the proposal's effect on traffic, environmental cleanup, and the overall neighborhood character, but was not persuaded by these arguments given the measures taken by the applicant to address the traffic and environmental concerns and to otherwise ensure that the proposal will not have a negative impact on the surrounding area; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, as noted above, food stores (Use Group 6) are permitted as-of-right in the subject M2-1 zoning district up to a floor area of 10,000 sq. ft., the proposed building is well below the maximum permitted FAR for a conforming use in the district, and the proposal would comply with all other bulk regulations for a conforming use aside from parking; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I Action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11-BSA-096K dated February 13, 2012; and

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

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials, infrastructure and natural resources impacts; and

WHEREAS, DEP reviewed and accepted the September 2011 Remedial Action Plan and the Construction Health and Safety Plan for lots 23, 30 and 32 of the subject site; and

WHEREAS, DEP requested that a Remedial Closure Report for lots 23, 30 and 32 be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, the applicant entered into a Brownfield Cleanup Agreement with the DEC in March 2005 for the

remainder of the site (lots 16, 19 and a portion of lots 1 and 7); and

WHEREAS, the applicant has completed the remediation work described in the DEC-approved Remedial Work Plan and a final engineering report has been prepared; and

WHEREAS, DEP requires that the proposed project use Best Management Practices in designing and constructing the on-site stormwater management infrastructure as found in the New York Standards and Specifications for Erosion and Sediment Control, and the New York State Stormwater Management Design Manual; and

WHEREAS, the project site includes a classified DEC-regulated tidal wetland along the bank of the 4<sup>th</sup> Street Basin; and

WHEREAS, DEC issued a Tidal Wetlands and Protection of Waters permit in 2009 ("2009 DEC permit") for the proposed project; and

WHEREAS, the applicant will seek a minor modification to the 2009 DEC permit to conform the permit's scope of work with the proposal under the variance application; and

WHEREAS, as previously noted, the applicant has proposed traffic improvement measures, including the installation of a traffic signal at the intersection formed by 3<sup>rd</sup> Street and the driveway to the site, signal timing shifts at surrounding intersections, lane restriping, and the addition of new directional signage; and

WHEREAS, in a January 9, 2012 letter, DOT identifies all of the proposed measures and notes that the improvements appear reasonable and feasible; and

WHEREAS, DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases as well as the design installation of the new traffic signal; and

WHEREAS, DOT notes in its January 9, 2012 letter that the applicant is committed to holding discussions with Verizon regarding resolving potential safety and operational issues with the existing entrance to the Verizon facility on Third Street and the proposed entrance to Whole Foods on Third Street; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in an M2-1 zoning district, the construction of a two-story food store (Use Group 6) in excess of 10,000 sq. ft., which does not conform to district use regulations, contrary to ZR § 42-12; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 8, 2012" – (19) sheets; and *on further condition*:

THAT the following are the bulk parameters of the

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proposed building: a maximum total floor area of 75,870 sq. ft. (0.41 FAR), with a Use Group 6 floor area of 56,470 sq. ft. (0.30 FAR) and a Use Group 17 floor area of 19,400 sq. ft. (0.10 FAR); and a minimum of 246 accessory parking spaces, as indicated on the BSA-approved plans;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the City Planning Commission has issued a certification for waterfront public access pursuant to ZR § 62-811;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until the DEC has issued a modified Tidal Wetlands and Protections of Waters permit;

THAT a Temporary Certificate of Occupancy ("TCO") shall not be issued until DEP has approved the Remedial Closure Report;

THAT a TCO shall not be issued until DEC has issued a Certificate of Completion for remediation under the Brownfield Cleanup Program;

THAT the applicant is responsible for all costs associated with the design and construction of all traffic improvement measures proposed in the EAS, including the new traffic signal, consistent with the customary and standard DOT practice;

THAT the applicant will submit to DOT at least six months in advance of completion of the project all of the required drawings/designs relating to the improvements identified in DOT's January 9, 2012 letter;

THAT if the boundaries of the Landmark Building Site are changed by any action subsequent to the Board's approval, the applicant must seek any required review and approval from the Landmarks Preservation Commission and any resultant requirement for modification to the plans from the Board;

THAT construction shall proceed in accordance with ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, February 28, 2012.

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## 137-11-BZ

### CEQR #12-BSA-023K

APPLICANT – Slater & Beckerman, LLP, for 455 Carroll Street LLC, owner.

SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow the conversion of the second floor and second floor mezzanine from manufacturing and commercial

uses to residential use, contrary to §42-10. M1-2 zoning district.

PREMISES AFFECTED – 455 Carroll Street, mid-block on the north side of Carroll Street between Nevins Street and Third Avenue, Block 447, Lot 47, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Stefanie Marazzi.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 16, 2011, acting on Department of Buildings Application No. 320284385, reads in pertinent part:

Proposed UG 2 residential use in an M1-2 zoning district is contrary to Section 42-00 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the legalization of the residential use on the second floor and second floor mezzanine of a two-story manufacturing building, which is contrary to ZR § 42-00; and

WHEREAS, the building will maintain a conforming use on the first floor and has a total floor area of 9,580 sq. ft. (2.4 FAR) and a street wall and total height of 28 feet; and

WHEREAS, a public hearing was held on this application on November 22, 2011 after due notice by publication in the *City Record*, with a continued hearing on January 10, 2012, and then to decision on February 28, 2012; and

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

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

WHEREAS, the subject site is located on the north side of Carroll Street between Nevins Street and Third Avenue; and

WHEREAS, the site has a lot area of approximately 4,000 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story building; the first floor and first floor mezzanine are occupied by a conforming manufacturing use and the second floor and second floor mezzanine are occupied by non-conforming residential use; and

WHEREAS, because the applicant proposes to legalize the Use Group 2 dwelling unit, a variance is required; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject

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lot in conformity with applicable regulations: (1) the second floor is narrow and irregularly-shaped and has an inadequate live load; (2) the narrow staircase and the absence of an elevator; (3) the absence of a loading berth; and (4) the small size of the lot and its location on a narrow street among residential uses; and

WHEREAS, as to the second floor's configuration, the applicant asserts that it is irregularly-shaped with undersized floor plates and has an insufficient live load, which cannot accommodate modern manufacturing uses; and

WHEREAS, the applicant states that the 4,000 sq. ft. floor plate is an insufficient size, particularly since it is diminished by the staircase to the second floor mezzanine and surrounding partitions; and

WHEREAS, further, the applicant notes that the second floor has a live load capacity of 60 and therefore does not meet the live load capacity of 120 set forth in the Certificate of Occupancy; and

WHEREAS, the applicant submitted an engineer's statement that renovating the second floor to meet a live load capacity of 125 as required by the Building Code for light manufacturing would require significant expenditure; and

WHEREAS, as to the internal circulation, the applicant represents that the absence of an elevator and the narrow staircase do not accommodate the efficient transfer of materials and machinery between floors; and

WHEREAS, specifically, the applicant states that the stairway to the second floor has a width of only 5'-2" and opens onto the street by a standard-size door and that an interior door is oriented 90 degrees from the staircase; and

WHEREAS, the applicant states that if it were to change the second floor use to a conforming Use Group 6 commercial office, it would be required to install an elevator to meet ADA accessibility regulations; and

WHEREAS, as to the absence of a loading berth, the applicant states that Carroll Street is a one-way, narrow, primarily residential street with parking on both sides, which requires that loading must take place on the sidewalk and street and would thus obstruct vehicular and pedestrian traffic; and

WHEREAS, as to the location and size of the building, the applicant states that the subject block is occupied primarily by residential use in a neighborhood bounded by the Gowanus Canal and far from commercial office districts which support commercial use; and

WHEREAS, the applicant states that the floor area of the second floor (4,000 sq. ft.) and second floor mezzanine (1,200 sq. ft.), while too small for a manufacturing use would be a large amount of office space in what is predominantly a residential area and would therefore not be marketable; and

WHEREAS, as to the uniqueness of the conditions, the applicant performed a lot use and width analysis which reflects that the site is the only two-story completely conforming commercial or industrial building within a one to two block radius with a width of 40 feet or less, that is adjacent to residential use on both sides; and

WHEREAS, the applicant states that the analysis

evaluated the lot width and use of the 443 lots bounded by Sackett Street, Fourth Avenue, Bond Street, and Third Street, which is almost equivalent to the area in the Department of City Planning's Rezoning Proposal for the Gowanus; and

WHEREAS, the applicant represents that within the study area, there are only four similarly-situated two-story manufacturing buildings with a width of 40 feet or less, which amounts to 0.9 percent of the total buildings; and

WHEREAS, the applicant asserts that the four other buildings can be distinguished based on location on a wider street, being part of assemblage sites, adjacency to other conforming uses, and/or having better vehicular access; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the use of the property in conformance with applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing a conforming industrial use, a conforming mixed-use industrial/commercial use, and the existing/proposed mixed-use industrial/residential use; and

WHEREAS, the applicant concluded that only the proposed use would realize a reasonable return; and

WHEREAS, the applicant submitted evidence that the prior owner had unsuccessfully attempted to market the building for a conforming use; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the buildings surrounding the property are predominantly residential; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including the adjacent residential buildings and others on the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, based upon its review of the submitted land use map and its site inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of one dwelling unit will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, the applicant notes that the existing



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building envelope and floor area will be maintained; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board finds that the proposal to maintain the conforming use on the first floor and to legalize one dwelling unit on the second floor is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA023K, dated February 22, 2012; and

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

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the February 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed and accepted the February 2012 Remedial Closure Report; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the

New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit the legalization of the residential use on the second floor and second floor mezzanine of a two-story manufacturing building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 7, 2011" – four (4) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building total floor area of 9,580 sq. ft., with a maximum Use Group 2 floor area of 5,200 sq. ft. and one residential unit, as indicated on the BSA-approved plans;

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

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

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

Adopted by the Board of Standards and Appeals, February 28, 2012.

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## 175-11-BZ

APPLICANT – Raymond H. Levin, for Clinton Park Holdings, LLC, owners.

SUBJECT – Application November 10, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*Mercedes House*). C6-3X (Clinton Special District).

PREMISES AFFECTED – 550 West 54<sup>th</sup> Street, aka 770 11<sup>th</sup> Avenue, bounded by 11<sup>th</sup> Avenue, West 54<sup>th</sup> Street, 10<sup>th</sup> Avenue and West 53<sup>rd</sup> Street, Block 1082, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Raymond Levin.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 4, 2012, acting on Department of Buildings Application No. 104856942, reads in pertinent part:

A Physical Culture Establishment is not a permitted as-of-right use in a C6-3X zoning

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district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-3X zoning district within the Special Clinton District (CL), the operation of a physical culture establishment (“PCE”) on the fourth floor of a 32-story mixed-use residential/commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, and then to decision on February 28, 2012; and

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

WHEREAS, Community Board 4, Manhattan recommends approval of the application with the following conditions: (1) that there be a pricing structure which would make membership affordable to all residents of the subject building and (2) that the applicant provide community-based programming for community members; and

WHEREAS, the subject site located bounded by 11<sup>th</sup> Avenue, West 53<sup>rd</sup> Street, 10<sup>th</sup> Avenue, and West 54<sup>th</sup> Street in a C6-3X zoning district within the Special Clinton District (CL); and

WHEREAS, the subject site will be occupied by a 32-story mixed-use residential/commercial building, which is currently under construction and is known as Mercedes House; and

WHEREAS, the PCE will occupy 28,151 sq. ft. of floor space primarily on the fourth floor; and

WHEREAS, the PCE will be self-operated by the developer Two Trees Management Company; and

WHEREAS, the PCE is expected to operate Monday through Friday 5:30 a.m. to 11:00 p.m.; Saturday 7:00 a.m. to 9:00 p.m.; and Sunday from 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that the new construction will include noise abatement to ensure that the sound level does not exceed a maximum interior level of 45 dba, as established by the New York City Department of Environmental Protection; and

WHEREAS, the applicant proposes to install acoustical separation between the PCE and the residential use and to include a Sound Transmission Class and Impact Isolation Class rating of 50 between floors which will be achieved through an eight-inch concrete slab with resilient underlayment as well as other measures; and

WHEREAS, the applicant states that it is considering the potential to comply with the Community Board’s conditions, but cannot commit to any such plan currently; and

WHEREAS, the Board notes that it does not require the applicant to comply with the conditions that are beyond the scope of its review of the special permit application; and

WHEREAS, the Board finds that this action will

neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

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

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board adopts the findings of the Final Environmental Impact Statement (FEIS) (07DCP071M); and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals adopts the FEIS’s findings prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an C6-3X zoning district within the Special Clinton District (CL), the operation of a physical culture establishment on the fourth floor of a 32-story mixed-use residential/commercial building, contrary to ZR § 32-30; *condition* that all work shall substantially conform to drawings filed with this application marked “Received February 13, 2012”- (2) sheets and “Received January 6, 2012”-(1) sheet, and *on further condition*:

THAT the term of this grant will expire on February 28, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

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

THAT sound attenuation measures must be installed in the PCE as shown on the Board-approved plans;

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

THAT substantial construction will be completed in accordance with ZR § 73-70;

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

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

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

Adopted by the Board of Standards and Appeals, February 28, 2012.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman and David Shteierman.

For Opposition: Assembly Member Barbara M. Clark, Council Member James Sanders, Jr., Joseph Goldbloom of Council Member Leroy Comrie, Eugene Falik, Kelli M. Singleton, Doris Bodine, Steven Taylor, Elaine Wallace, Phyllis Rudnick and Edgar Moore.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for continued hearing.

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## 108-11-BZ thru 111-11-BZ

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

SUBJECT – Application August 8, 2011 – Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use, contrary to §32-433. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 10, 12, 14 & 16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the

intersection of Hett Avenue and New Dorp Lane. Block 4065, Lots 27, 25, 24 & 21, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1) in a new commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29<sup>th</sup> Street, corner of 29<sup>th</sup> Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivien R. Krieger, Jay Valgora and James Hincmen.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 1:30 P.M., for continued hearing.

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## 129-11-BZ

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3<sup>rd</sup> Avenue. Block 447, Lot 43. Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jeffrey Chester and Sebastian Giuliano.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for decision, hearing closed.

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## 158-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76’ south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 167-11-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 20, 2011 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) with an accessory drive-through facility. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik and Eric Menn.

For Opposition: Zelma Torres Rosado and James Monero.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 1:30 P.M., for continued hearing.

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## 169-11-BZ

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011 – Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14<sup>th</sup> Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Jonathan Dagry.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for continued hearing.

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## 197-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 329 Wyckoff Realty, LLC, owner; Wyckoff Fitness Group, LLC, lessee.

SUBJECT – Application December 30, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on a portion of the first and second floors of an existing two-story building. C4-3 zoning districts.

PREMISES AFFECTED – 329 Wyckoff Avenue, northeast corner of the intersection formed by Wyckoff and Myrtle Avenues and Palmetto Street, Block 3444, Lot 33, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION

This resolution adopted on December 6, 2011, under Calendar No. 926-86-BZ and printed in Volume 96, Bulletin Nos. 49-50, is hereby corrected to read as follows:

### 926-86-BZ

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

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217<sup>th</sup> Street and 218<sup>th</sup> Street, Block 6320, Lot 18, Borough of Queens.

### COMMUNITY BOARD #11Q

#### APPEARANCES –

For Applicant: Jordan Most.

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of a previously granted variance for an automotive dealership with accessory repairs (Use Group 16B), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 12, 2011 after due notice by publication in *The City Record*, with continued hearings on August 23, 2011, September 27, 2011 and October 25, 2011, and then to decision on December 6, 2011; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the term of the grant be limited to five years; (2) the lessee submit a report to the Community Board every six months detailing their compliance with the conditions of the grant; (3) lighting be installed; (4) all cars awaiting service be parked on-site and all work be performed on-site; (5) the fencing be repaired and graffiti removed; (6) the landscaping be maintained; (7) “grass” slats be installed in the chain link fence; (8) after-hour tow trucks turn off engines and flashing lights when on the property; (9) the hours of operation remain as previously approved; and (10) workers on the site not be allowed to barbecue or play excessively loud music; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, with similar conditions as stipulated by the Community Board;

and

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

WHEREAS, the site is located on the north side of the Northern Boulevard between 217<sup>th</sup> Street and 218<sup>th</sup> Street, partially within a C2-2 (R6B) zoning district, and partially within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1962 when, under BSA Cal. No. 1875-61-BZ, the Board granted a variance to permit, in conjunction with the construction of a one-story and basement building for use as an authorized car agency, accessory auto repairs and the use of the open area for sales and service of new and used cars and the parking of more than five vehicles; and

WHEREAS, on November 4, 1987, under the subject calendar number, the Board granted a special permit pursuant to ZR § 11-412, to allow the expansion of the outdoor parking area of the automobile showroom and service facility, for a term of three years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 13, 2005, the Board granted a five-year extension of the term and an amendment to permit an increase from a maximum of 72 parking spaces to a maximum of 82 parking spaces on the site, which expired on November 4, 2010; and

WHEREAS, the applicant now seeks a ten-year extension of term, and an extension of time to obtain a certificate of occupancy; and

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

WHEREAS, as to the conditions stipulated by the Community Board and the Queens Borough President, the applicant requests that the Board extend the term for a full ten years, and permit an extension of the hours of operation for the showroom portion of the site; and

WHEREAS, specifically, the applicant proposes to increase the hours of operation for the showroom to Monday through Friday, from 9:00 a.m. to 9:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 5:00 p.m.; the hours of operation for the automotive service use would remain Monday through Thursday, from 8:00 a.m. to 7:00 p.m., Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays; and

WHEREAS, the applicant submitted a table reflecting the hours of operation for other automobile dealerships along Northern Boulevard, which reflects that the proposed extension of the hours of operation for the showroom is consistent with the hours for similar uses in the surrounding area; and

WHEREAS, the applicant agreed to comply with the remaining conditions proposed by the Community Board and the Borough President; and

WHEREAS, at the Board’s direction, the applicant submitted a contract with a fencing company for the removal

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and replacement of damaged fencing and cinder block walls on the site, and submitted photographs reflecting that said work has commenced on the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 4, 1987, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 4, 2010, to expire on November 4, 2020, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on December 6, 2012; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received September 14, 2011”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on November 4, 2020;

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

THAT lighting shall be installed in accordance with the BSA-approved plans;

THAT all cars awaiting service shall be parked on-site and all work shall be performed on-site;

THAT fencing and landscaping shall be maintained as indicated on the BSA-approved plans;

THAT tow trucks arriving after business hours shall turn off engines and flashing lights while on the site;

THAT the hours of operation for the showroom shall be Monday through Friday, from 9:00 a.m. to 9:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 5:00 p.m.; and the hours of operation for the automotive service use shall be Monday through Thursday, from 8:00 a.m. to 7:00 p.m., Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by December 6, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402140875)

Adopted by the Board of Standards and Appeals December 6, 2011.

**\*The resolution has been revised to add Approved Plans. Corrected in Bulletin Nos. 9-10, Vol. 97, dated March 8, 2012.**

## \*CORRECTION

This resolution adopted on October 25, 2011, under Calendar No. 230-10-BZ and printed in Volume 96, Bulletin No. 44, is hereby corrected to read as follows:

### 230-10-BZ

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

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 19, 2010, acting on Department of Buildings Application No. 320202721, reads:

“The proposed horizontal and vertical enlargement of the existing one family residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to open space and is contrary to Section 23-141(b) ZR.
4. Creates a new non-compliance with respect to perimeter wall height and is contrary to Section 23-631(b) ZR;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and perimeter wall height, contrary to ZR §§ 23-141 and 23-631; and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in *The City Record*, with continued hearings on July 12, 2011, August 16, 2011 and September 27, 2011, and then to decision on October 25, 2011 and

WHEREAS, the premises and surrounding area had

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site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application; and

WHEREAS, certain members of the community provided written and oral testimony in opposition to this application; and

WHEREAS, collectively, the parties who submitted testimony in opposition to this application are the "Opposition;" and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed FAR, perimeter wall height, and front yard depth are out of context with the surrounding area; and (2) the proposed side yard balcony along the northern side of the home is not permitted; and

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

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,547 sq. ft. (0.42 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,547 sq. ft. (0.42 FAR) to 5,760 sq. ft. (0.96 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant initially proposed to increase the floor area to 6,114 sq. ft. (1.02 FAR); and

WHEREAS, in response to concerns raised by the Board and the Opposition, the applicant provided an interim proposal which reduced the proposed floor area to 5,974 sq. ft. (1.0 FAR); at the Board's direction the applicant further reduced the floor area to the current proposal of 5,760 sq. ft. (0.96 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 46 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide 3,234 sq. ft. of open space (3,900 sq. ft. of open space is the minimum required); and

WHEREAS, the applicant proposes to provide a perimeter wall height of 22'-1" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-1 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a

streetscape and a survey establishing that the adjacent home to the north, 173 Kensington Street, has a perimeter wall height of 23'-8"; and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21'-0"; and

WHEREAS, the Opposition contends that the proposed home is out of context with the surrounding neighborhood because the FAR is excessive; and

WHEREAS, as noted above, the applicant originally proposed a home with a floor area of 6,114 sq. ft. (1.02 FAR), but revised its plans to reflect the current floor area of 5,760 sq. ft. (0.96 FAR) in response to concerns raised by the Board and the Opposition; and

WHEREAS, the applicant submitted a survey of homes within a 400-ft. radius of the site, which indicates that there are at least ten homes within the surrounding area with FARs that exceed the proposed 0.96 FAR; and

WHEREAS, the applicant also submitted a survey of homes within an expanded study area bounded by Oriental Boulevard to the south, Falmouth Street to the west, Hampton Avenue/Shore Boulevard to the north and Pembroke Street to the east, which reflected that 57 homes within the study area have FARs which exceed 0.95 FAR, and 21 homes within the study area have floor areas which exceed 5,000 sq. ft.; and

WHEREAS, the Opposition contends that the methodology of the applicant's FAR study is flawed because it relies on the Primary Land Use Tax Lot Output ("PLUTO") for its FAR data, and there are inaccuracies in the PLUTO database; and

WHEREAS, the Board recognizes that the PLUTO data may have errors, however, it finds that the database can still be relied on to provide a general sense of the FARs in the surrounding neighborhood; and

WHEREAS, the Board notes that the PLUTO database is maintained by the Department of City Planning, and is relied upon for various land use studies; and

WHEREAS, the Opposition contends that the proposed front yard with a depth of 15'-0" is out of context with the surrounding area, which predominantly provides front yards with depths of at least 18'-0", and that the shallower front yard will block light and air to adjacent homes; and

WHEREAS, the Board notes that the proposed front yard depth of 15'-0" is in compliance with the underlying R3-1 zoning district regulations, and is therefore permitted as-of-right; and

WHEREAS, the Opposition also raised concerns about the proposed balcony along the northern side of the home; and

WHEREAS, in response, the applicant revised its

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# MINUTES

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plans to reflect the removal of the subject balcony; and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted revised plans which indicate that portions of the existing cellar, first floor, and second floor walls, and portions of the floor joists at the first floor and second floor will remain; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and perimeter wall height, contrary to ZR §§ 23-141 and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 12, 2011"-(13) sheets and "October 19, 2011"-(1) sheet; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,760 sq. ft. (0.96 FAR); a maximum lot coverage of 46 percent; a minimum of 3,234 sq. ft. of open space; and a maximum perimeter wall height of 22'-8", as illustrated on the BSA-approved plans;

THAT no balconies shall be permitted along the north side of the home;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure

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

Adopted by the Board of Standards and Appeals, October 25, 2011.

**\*The resolution has been revised to correct the sq. ft. in the 17<sup>th</sup> WHEREAS which read: "4,466 sq. ft." now reads: "3,900 sq. ft.", and to amend the clause, in the 1<sup>st</sup> condition which read in part..: "42 percent..." now reads: "46 percent...". Corrected in Bulletin Nos. 9-10, Vol. 97, dated March 8, 2012.**



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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 97, No. 11

March 14, 2012

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## DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

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EILEEN MONTANEZ

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177-11-BZ            601 East 156<sup>th</sup> Street, aka 800 St. Ann's Avenue, Bronx  
195-11-BZ            2070 East 21<sup>st</sup> Street, Brooklyn  
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# DOCKET

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New Case Filed Up to March 6, 2012

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**46-12-A**

4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues., Block 3027, Lot(s) 1, Borough of **Bronx, Community Board: 6**. Application to permit the proposed mixed use development which rests partially within the bed of the mapped but unbuilt portion of East Tremont Avenue contrary to General City Law Section 35 . C4-5X(R7X) Zoning District C4-5X district.

-----

**47-12-A**

22 Lewiston Street, west side of Lewiston Street, 530.86' north of intersection with Travis Avenue., Block 2370, Lot(s) 238, Borough of **Staten Island, Community Board: 2**. Appeal seeking determination that the Department of Buildings improperly denied application for permit for new building based on erroneous decision that proposed building did not qualify for rear yard reduction pursuant to Z.R.§23-52. R3-1(LDGMA) district.

-----

**48-12-BZ**

336 West 37th Street, South side of West 37th Street between Eighth and Ninth Avenues, Block 760, Lot(s) 63, Borough of **Manhattan, Community Board: 04**. Variance (§72-21) to permit the legalization of an existing 14-story commercial building primarily as Use Group 6 offices. C6-4 (GC, P2) zoning district C6-4 (GC, P2) district.

-----

**49-12-BZ**

34-09 Francis Lewis Boulevard, northeast corner of Francis Lewis Boulevard and 34th Avenue, Block 6077, Lot(s) 1, Borough of **Queens, Community Board: 11**. Special Permit (§73-36) to permit the operation of a physical culture establishment in a portion of an existing one-story commercial building. C2-2\R5B zoning district C2-2/R5B district.

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**50-12-BZ**

177-90 South Conduit Avenue, south side of South Conduit Avenue, 229.83' west of corner of South Conduit Avenue and Farmers Boulevard., Block 13312, Lot(s) 146, Borough of **Queens, Community Board: 13**. Proposed one story commercial retail building (Use Group 6) in an R3-2 zoning district is contrary to 22-00 Z.R. R3-2 district.

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

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# CALENDAR

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**MARCH 27, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 27, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **389-37-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore and George Fiore.

SUBJECT – Application February 22, 2012 – Extension of Time to obtain a Certificate of Occupancy of previously granted variance for the operation of a UG8 parking lot which expired on May 11, 2011; Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 to 31-12 45<sup>th</sup> Street, southwest corner of 45<sup>th</sup> Street and 31<sup>st</sup> Avenue, Block 710, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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### **21-01-BZ**

APPLICANT – Troutman Sanders, LLP, for Mattone Group Jamaica Co., LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application January 23, 2012 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (Bally Total Fitness) which expired on May 22, 2011. C6-3 (DJ) zoning district.

PREMISES AFFECTED – 159-02 Jamaica Avenue, 160<sup>th</sup> Street, Block 10100, Lot 1, Borough of Queens.

**COMMUNITY BOARD #12Q**

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### **77-05-BZ**

APPLICANT – Wachtel & Masyr, LLP, for Jack Ancona, owner.

SUBJECT – Application February 21, 2012 – Extension of Time to Complete Construction of a previously granted Variance (ZR §72-21) to permit the construction of a twelve-story mixed use building, containing residential (UG2) and retail uses (UG6) which expired on February 28, 2010; waiver of the rules. M1-6 zoning district.

PREMISES AFFECTED – 132 West 26<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 801, Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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### **187-10-BZ**

APPLICANT – NYC Board of Standards and Appeals

OWNER – Ranjit S. Atwal

SUBJECT – Application October 5, 2010 – Dismissal for lack of Prosecution – Variance (§72-21) to permit the legalization of a three family building which does not comply with the side yard zoning requirements (ZR §23-462(c)). R6B zoning district.

PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

**COMMUNITY BOARD #2Q**

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## **APPEALS CALENDAR**

### **122-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mitchell Pacifico, owner.

SUBJECT – Application August 23, 2011 – Proposed construction of a one family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 5 Bement Avenue, southeast corner of Bement Avenue and Richmond Terrace, Block 150, Lot 4, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **163-11-A**

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Application filed by the Fire Department seeking a modification of the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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# CALENDAR

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**MARCH 27, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 27, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**71-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*). R4 Zoning District.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**183-11-BZ**

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for S.K.I. Realty, Inc., owner; Memorial Hospital for cancer and Allied Diseases, lessee.

SUBJECT – Application December 5, 2011 – Variance (§72-21) to allow for the construction of a new outpatient surgical center (*Memorial Hospital for Cancer and Allied Diseases*) contrary to maximum floor area ratio (ZR§33-123); rear yard (ZR §33-261) height and setback regulations (ZR§33-432); curb cut (ZR§13-142) and signage (ZR §§32-643 & 32-655) C1-9/C8-4 zoning districts.

PREMISES AFFECTED – 1133 York Avenue, north side of east 61<sup>st</sup> Street, westerly from the corner formed by the intersection of the northerly side of East 61<sup>st</sup> Street and the westerly side of York Avenue, Block 1456, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**193-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MARCH 6, 2012  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**352-69-BZ**

APPLICANT – Sheldon Lobel, P.C., for Dr. Alan Burns, owner.

SUBJECT – Application September 29, 2011 – Extension of Term (§72-21) of a Variance for the continued operation of a UG16 animal hospital (*Brooklyn Veterinary Hospital*) which expired on September 30, 1999; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 411 Vanderbilt Avenue, east side of Vanderbilt Avenue between Greene and Gates Avenue, Block 1960, Lot 28, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Jordan Most.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver, and an extension of term for the continued use of the site as an animal hospital (Use Group 16), which expired on September 30, 1999; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, with a continued hearing February 7, 2012, and then to decision on March 6, 2012; and

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

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

WHEREAS, the site is located on the east side of Vanderbilt Avenue between Greene Avenue and Gates Avenue, within an R6B zoning district; and

WHEREAS, the site has 55 feet of frontage on Vanderbilt Avenue, a depth of 70 feet, and a total lot area of 3,861 sq. ft.; and

WHEREAS, the site is occupied by a two-story building with an animal hospital (Use Group 16) at the first floor and residential use above; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 30, 1969 when, under the subject calendar number, the Board granted a variance to permit the change in occupancy of an existing one-story building from a machine shop and electrical repair shop to an animal hospital, for a term of ten years; and

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

WHEREAS, most recently, on June 12, 1990, the Board granted an amendment to legalize changes to the interior design and layout and the construction of an open storage shed in the rear yard, and an extension of term for ten years from the expiration of the prior grant, to expire on September 30, 1999; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, at hearing, the Board directed the applicant to provide evidence in support of its representation that the subject animal hospital has been operating continuously on the site since the Board's last extension of term grant in 1990; and

WHEREAS, in response, the applicant submitted (1) an affidavit from the owner stating that he has worked at or owned the site since 1995 and the animal hospital use has operated continuously since that time; (2) W-2 forms for tax years 1995 and 1996 reflecting the current owner was employed by the animal hospital during those years; (3) copies of deeds reflecting the transfer in interest to the current owner of the site; and (4) an affidavit stating that the applicant researched the business telephone numbers maintained at the subject site from 1990 to the present and that The Cole's Cross Reference Directory showed that the animal hospital maintained an operating phone line at the site since 1990; and (5) photographs of the relevant pages from the Cole's directory; and

WHEREAS, the Board finds that the evidence submitted by the applicant is sufficient to establish that the animal hospital has operated continuously at the site since the Board's last extension of term grant in 1990; and

WHEREAS, the Board also raised questions regarding the use of the kennels at the rear of the site and whether overnight care for animals is provided at the site, which may result in noise during the overnight hours; and

WHEREAS, in response, the applicant states that the kennels at the rear of the site are only used temporarily when cleaning the interior of the site; and

WHEREAS, the applicant further states that typically animals that require overnight treatment are transferred to a separate facility, and animals are only kept at the site overnight if their status is critical and transfer to another facility could jeopardize their health, which only occurs once every four to six weeks; and

WHEREAS, the applicant further states that when overnight treatment is required at the site, the animals are monitored by one of the animal hospital's veterinary technicians, who resides in one of the upstairs apartments; and

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WHEREAS, since animals are rarely kept for overnight treatment at the site, the applicant states that the noise during the overnight hours has not been an issue; and

WHEREAS, based upon the above, the Board finds that the requested ten-year extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated September 30, 1969, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the date of the grant, to expire on March 6, 2022; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘September 29, 2011’-(4) sheets; and *on further condition*:

THAT the term of the grant will expire on March 6, 2022;

THAT the above condition will be reflected on the certificate of occupancy;

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

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

THAT the Department of Buildings must 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.” (Alt. 632-69)

Adopted by the Board of Standards and Appeals March 6, 2012.

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## 548-79-BZ

APPLICANT – Bryan Cave LLP, for 249 West 29 Owners Corp.

SUBJECT – Application December 2, 2011 – Amendment of a previously approved variance (§72-21) which permitted residential use (UG2) on floors 3 through 15. Application seeks to legalize residential use on the 2nd floor, contrary to use regulations §42-481. M1-6D zoning district.

PREMISES AFFECTED – 247-251 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street, 170’ east of 8<sup>th</sup> Avenue, Block 779, Lot 10, 12, Borough of Manhattan.

## COMMUNITY BOARD #5M

### APPEARANCES –

For Applicant: Margery Perlmutter.

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted

the conversion of all floors above the second floor of a 15-story commercial and manufacturing building to residential use, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, and then to decision on March 6, 2012; and

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

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

WHEREAS, the subject site is located on the north side of West 29<sup>th</sup> Street between Seventh Avenue and Eighth Avenue, within an M1-6D zoning district; and

WHEREAS, the applicant notes that the site was formerly located within an M1-5 zoning district, but on September 21, 2011, the City Council rezoned the site to M1-6D; and

WHEREAS, the site has 75 feet of frontage on West 29<sup>th</sup> Street, a depth of 100 feet, and a lot area of 7,500 sq. ft.; and

WHEREAS, the site is occupied by a 50-ft. wide 15-story building at 249 West 29<sup>th</sup> Street (the “249 Building”) and an adjoining 25-ft. wide, two-story building at 247 West 29<sup>th</sup> Street (the “247 Building”) (together, the “Building”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 15, 1980 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the conversion of all floors above the second floor of the commercial and manufacturing building to residential use, contrary to ZR § 42-00; and

WHEREAS, subsequently, the grant was amended on several occasions to permit changes in the number of dwelling units on certain floors, changes to the interior layout of the Building, and the addition of a greenhouse on the exterior balcony of the tenth floor; and

WHEREAS, the applicant now seeks to amend the grant to permit the further conversion of the three commercial units on the second floor to residential use; and

WHEREAS, the applicant states that the original variance requested conversion of the second floor of the Building, which at the time was occupied by an active conforming use, to residential as well, however the Board excluded the second floor from the variance approval; and

WHEREAS, the applicant states that in the years since the variance was granted, the owners of the three units on the second floor have had difficulty finding long-term replacement tenants, and all of the commercial spaces on the second floor are now occupied as live-work spaces; and

WHEREAS, the applicant represents that converting the second floor to residential use is necessary to provide a reasonable return because the owners are unlikely to find commercial tenants for the second floor units for the following reasons: (1) the floor plates and size of the units at the second floor are too small to be attractive to many manufacturing or commercial uses; (2) the layout of the second floor imposes hardships on the suitability and marketability of that floor for

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conforming uses; and (3) there is only one lobby and elevator for both the residential and commercial tenants, which creates access, egress, and security issues; and

WHEREAS, as to the physical structure of the Building, the applicant states that the Building has small floor plates with units containing less than 2,100 sq. ft. each, and are too small to accommodate the types of commercial and manufacturing uses that operate in the surrounding area; and

WHEREAS, the Board notes that the unique building conditions, which support the findings for the original variance for the third through 15<sup>th</sup> floors, namely that those floors were not viable for a conforming use due to the building's inadequate floor plates, there was a lack of interest in such spaces for commercial use, and the decline of the manufacturing sector in the area that led to extensive vacancies, also apply to the second floor; and

WHEREAS, as to the layout of the second floor, the applicant notes that the second floor of the 249 Building is 50 feet wide and approximately 88 feet deep (4,400 sq. ft.), and is occupied by two of the second floor units, while the second floor of the 247 Building is 25 feet wide and approximately 88 feet deep (2,210 sq. ft.), and is occupied by one of the second floor units; and

WHEREAS, the applicant states that for structural reasons there is a four-ft. wide penetration through the party wall that connects the 249 Building and the 247 Building, which separates the first and second floors of the Building into two parts; and

WHEREAS, the applicant further states that the opening in the party wall to allow access between the 247 Building and the 249 Building is limited by structural considerations, so it is not possible to treat the two portions as a single contiguous 6,610 sq. ft. space, which would be more marketable for conforming uses; and

WHEREAS, the applicant states that the elevator and stair cores, which occupy approximately 1,120 sq. ft., are located in the 249 Building and are the only means of access to the unit in the 247 Building; and

WHEREAS, the applicant represents that installing separate stairs and an elevator in the 247 Building solely to access one unit would be cost prohibitive and would significantly reduce the size of the retail space on the first floor, further reducing the Building's revenue; and

WHEREAS, as to the access issues, the applicant states that there is only one passenger elevator, while the freight elevator is manually operated and there is no full-time elevator operator on staff because it is cost prohibitive; and

WHEREAS, the applicant states that because visitors and employees of the commercial tenants at the second floor cannot use the manual freight elevator and there is no full-time elevator operator, commercial and residential tenants must share a common lobby and elevator, which results in an inappropriate mixing of public and private occupancies that poses a significant security risk to residential tenants; and

WHEREAS, the applicant represents that modification of the existing service corridor to provide separate, 36-inch wide clear access into the building by commercial tenants and their guests would require redirecting service risers and flues, re-

purposing a portion of the existing disused elevator shaft into a lobby area in order to be ADA-accessible, and converting the existing freight elevator from manual to automatic which would cost in excess of \$415,000; and

WHEREAS, as noted above, the subject site was rezoned from an M1-5 zoning district to an M1-6D zoning district on September 21, 2011; and

WHEREAS, the applicant states that in M1-6D zoning districts, ZR § 42-481 permits residential use in existing buildings where the building to be converted contains less than 40,000 sq. ft. of floor area; and

WHEREAS, however, the applicant notes that the Building contains approximately 62,500 sq. ft. of floor area and therefore is not eligible for as-of-right residential conversion pursuant to ZR § 42-481; and

WHEREAS, the applicant represents that the recent rezoning of the site to M1-6D reflects that residential uses are consistent with the surrounding neighborhood, which is characterized by a mix of manufacturing, commercial and residential uses; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 15, 1980, so that as amended this portion of the resolution shall read: "to permit the noted modification to the plans to reflect the conversion of the second floor to residential use, contrary to ZR § 42-481; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received December 2, 2011"- (4) sheets; and *on further condition*:

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

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

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

(DOB Application No. 120883491)

Adopted by the Board of Standards and Appeals, March 6, 2012.

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**433-61-BZ**

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.  
SUBJECT – Application November 28, 2012 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations; Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.



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## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Frank Sellitto and Harold Weinberg.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for continued hearing.

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## 997-84-BZ

APPLICANT – Akerman Senterfitt, for 222 Union Associates, owner; Central Parking System of New York, Inc., lessee.

SUBJECT – Application February 6, 2012 – Extension of Time to obtain a Certificate of Occupancy for an existing six story public parking garage with an automobile rental establishment which expired on June 4, 2008; waiver of the rules. R6A zoning district.

PREMISES AFFECTED – 800 Union Street, southside of Union Street between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 957, Lot 29, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

### APPEARANCES –

For Applicant: Jessica A. Loeser.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for continued hearing.

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## 271-90-BZ

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

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

## COMMUNITY BOARD #2Q

### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for continued hearing.

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## 162-95-BZ & 163-95-BZ

APPLICANT – Sheldon Lobel, P.C., for Salvatore Bonavita, owner; Pelham Bay Fitness Group, LLC, lessee.

SUBJECT – Application April 3, 2011 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on July 30, 2006; Amendment to increase the floor area of the establishment. Waiver of the rules. C2-4/R6 and R7-1 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, Southern side of Westchester Avenue between Mahan Avenue and Hobart Avenue. Block 4196, Lots 9, 11 & 13, Borough of Bronx.

## COMMUNITY BOARD #10BX

### APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for adjourned hearing.

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## APPEALS CALENDAR

### 149-11-A thru 151-11-A

APPLICANT – Sheldon Lobel, P.C., for Eastern 7 Inc., owner.

SUBJECT – Application September 16, 2011 – Appeal pursuant to NYC Charter §666.7 to permit construction of three, two-family homes within 30'-0" of the street line of Eastern Parkway, contrary to Administrative Code §18-112 and New York City Building Code §3201.3.1. R6 zoning district.

PREMISES AFFECTED – 1789, 1793 & 1797 St. John's Place, northeast corner of intersection formed by St. John's Place and Eastern Parkway, Block 1471, Lot 65, 67, 68, Borough of Brooklyn.

## COMMUNITY BOARD #16BK

### APPEARANCES –

For Applicant: Jordan Most.

### THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 10 A.M., for decision, hearing closed.

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### 155-11-A

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for continued hearing.

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### 162-11-A

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

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PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for continued hearing.

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**REGULAR MEETING**

**TUESDAY AFTERNOON, MARCH 6, 2012**

**1:30 P.M.**

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

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**ZONING CALENDAR**

**76-11-BZ**

**CEQR #11-BSA-103K**

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.

SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/Ocean Parkway zoning district.

PREMISES AFFECTED – 2263 East 2<sup>nd</sup> Street, approximately 235’ south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Nora Martins.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 25, 2011, acting on Department of Buildings Application No. 320292811, reads in pertinent part:

- ZR 23-141(b) Proposed floor area exceeds permitted
- ZR 23-141(b) Proposed lot coverage exceeds permitted
- ZR 23-141 Proposed open space is less than required
- ZR 23-47 Proposed rear yard is less than

required

ZR 23-461 Proposed side yard is less than required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with continued hearings on November 22, 2011, January 10, 2012 and February 7, 2012, and then to decision on March 6, 2012; and

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

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

WHEREAS, the subject site is located on the east side of East 2<sup>nd</sup> Street, between Avenue W and Gravesend Neck Road, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,970 sq. ft. (0.74 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,970 sq. ft. (0.74 FAR) to 4,969 sq. ft. (1.24 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes to provide an open space of 51 percent (55 percent is the minimum required); and

WHEREAS, the applicant proposes to provide lot coverage of 49 percent (45 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3’-1¼” (a minimum width of 5’-0” is required for each side yard) and to provide a side yard with a width of 8’-0” along the southern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

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

WHEREAS, the Board notes that the applicant’s original proposal stated that the proposed home had a floor area of 4,545 sq. ft. (1.15 FAR); and

WHEREAS, the applicant states that, in response to concerns raised by the Board during the hearing process, the applicant discovered that one of the proposed dormers encroached into the sky exposure plane, requiring a redesign of

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the attic and roof to ensure compliance; and

WHEREAS, the applicant represents that, after redesigning the attic floor plan the architect recalculated the floor area for the home and included certain walled-off areas of the attic not previously counted in the zoning calculations, pursuant to recent DOB policies regarding calculation of attic floor area, which resulted in a change in the floor area from 4,545 sq. ft. (1.15 FAR) to 4,969 sq. ft. (1.24 FAR); and

WHEREAS, the applicant states that, although the floor area is higher than what was originally proposed, the overall envelope of the home has actually been reduced, and is smaller than that approved by the Community Board; and

WHEREAS, the applicant performed a survey which reflected that there are 20 homes out of 657 homes within a 1,000-ft. radius of the site that have a floor area in excess of the proposed 4,969 sq. ft.; and

WHEREAS, the applicant states that three other homes on the subject block were enlarged pursuant to the special permit under ZR § 73-622, and that the subject homes had FARs of 1.22, 1.32 and 1.34, respectively, and therefore the proposed FAR of 1.24 is consistent with the nature of residential development in the surrounding area; and

WHEREAS, the applicant notes that a block like the subject block entirely within an R4 zoning district may be eligible for the predominantly built-up regulations, which include an increased floor area of 1.35 FAR as-of-right, but because the existing front yard of 9'-4¾" does not satisfy the minimum depth of 18'-0", the predominantly built-up area regulations cannot be applied to the subject site, thus the floor area request is required; and

WHEREAS, during the course of the hearing process, the Board directed the applicant to clarify whether the lowest floor is properly classified as a cellar or a basement; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the lowest floor fits the definition of a cellar and is therefore excluded from floor area calculations; and

WHEREAS, at the Board's direction the applicant also submitted revised plans that clearly depict which portions of the home are being retained, and note that the proposed parking spaces are subject to Department of Buildings ("DOB") approval; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to

be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 27, 2012"-(14) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,969 sq. ft. (1.24 FAR); lot coverage of 49 percent; an open space of 51 percent; a front yard with a minimum depth of 9'-4¾"; a side yard with a minimum width of 3'-1¼" along the northern lot line; a side yard with a minimum width of 8'-0" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, March 6, 2012.

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## **87-11-BZ**

### **CEQR #11-BSA-107K**

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

SUBJECT – Application June 21, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (23-141(b)). R3-1 zoning district.

PREMISES AFFECTED – 159 Exeter Street, between Hampton Street and Oriental Boulevard, Block 8737, Lot 26, Borough of Brooklyn.

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

APPEARANCES –

For Applicant: Todd Dale.

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

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## THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough  
Commissioner, dated April 26, 2011, acting on Department  
of Buildings Application No. 320297541, reads in pertinent  
part:

The proposed horizontal and vertical enlargement  
of the existing one family residence in an R3-1  
zoning district:

1. Creates a new non-compliance with respect to  
lot coverage and is contrary to Section 23-  
141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to  
floor area and is contrary to Section 23-141(b)  
ZR.
3. Creates a new non-compliance with respect to  
open space and is contrary to Section 23-  
141(b) ZR; and

WHEREAS, this is an application under ZR §§ 73-622  
and 73-03, to permit, in an R3-1 zoning district, the  
proposed enlargement of a single-family home, which does  
not comply with the zoning requirements for floor area,  
open space, and lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this  
application on January 10, 2012, after due notice by  
publication in *The City Record*, with a continued hearing on  
February 14, 2012, and then to decision on March 6, 2012;  
and

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

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

WHEREAS, the Manhattan Beach Community Group  
provided testimony in opposition to the proposal, citing  
concerns about (1) neighborhood character, (2) the accuracy  
of the data used to establish neighborhood context, (3)  
whether the lowest level is a basement, or a cellar, and (4)  
whether the architectural plans are complete; and

WHEREAS, the subject site is located on the east side  
of Exeter Street, between Hampton Street and Oriental  
Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of  
5,824 sq. ft., and is occupied by a single-family home with a  
floor area of 2,087 sq. ft. (0.36 FAR); and

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

WHEREAS, the applicant seeks an increase in the  
floor area from 2,087 sq. ft. (0.36 FAR) to 5,373 sq. ft. (0.92  
FAR); the maximum permitted floor area is 3,494 sq. ft.  
(0.60 FAR); and

WHEREAS, the applicant proposes to provide an open

space of 3,656 sq. ft. (the minimum required open space is  
3,786 sq. ft.); and

WHEREAS, the applicant proposes to provide lot  
coverage of 37 percent (35 percent is the maximum  
permitted); and

WHEREAS, the applicant proposes complying side  
yards with widths of 8'-9 ½" and 5'-0" and to provide a  
complying rear yard with a depth of 30'-6"; and

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

WHEREAS, at hearing, the Board directed the applicant  
to (1) provide an FAR analysis of homes in the surrounding  
area and (2) provide a survey which reflects the height of the  
home's floors; and

WHEREAS, in response, the applicant provided an FAR  
analysis which includes photographs of and bulk conditions for  
larger homes within a 400-ft. radius of the site; and

WHEREAS, as to the accuracy of the data, the applicant  
states that it cross-referenced the PLUTO data against DOB  
filings to identify any conflicting information; and

WHEREAS, the study reflects that there are 25 homes  
within a 400-ft. radius of the site with FAR that exceeds zoning  
district regulations, five homes with floor area between 4,000  
to 5,000 sq. ft., and four homes with floor area greater than  
5,000 sq. ft.; and

WHEREAS, the applicant notes that the Manhattan  
Beach Community Group's suggested methodology of  
establishing FAR - taking building dimensions supplied by the  
Department of Finance (DOF) and multiplying it by the  
number of floors – has the same flaws as taking the actual floor  
area supplied by the DOF, since the DOF is the source for both  
data sets; and

WHEREAS, accordingly, the applicant asserts that by  
cross-referencing with DOB filings, it has reduced the amount  
of acknowledged inaccuracies in the data, which are similarly  
present in Manhattan Beach's examples; and

WHEREAS, the Board notes that the data sources may  
contain flaws, but finds that the applicant's analysis, which  
includes photographs of the study homes and cross-referencing  
DOB filings, satisfies its request to provide information about  
the FAR of homes in the area and notes that there are flaws  
with the Manhattan Beach Community Group's alternative  
data; and

WHEREAS, the Board notes that the proposal includes  
all of the required yards and complies with all other bulk  
regulations other than minimal non-compliance with lot  
coverage and open space; and

WHEREAS, the Board also notes that it has made visits  
to the subject site and to the surrounding area to observe the  
built conditions and neighborhood character; and

WHEREAS, the applicant provided a survey, which  
reflects that more than half of the height of the lowest level is  
below grade and thus it is a cellar, rather than a basement, for  
zoning purposes; and

WHEREAS, the Board has reviewed the survey but notes  
that DOB will review the entire building, including the lowest

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level, to verify floor area calculations; and

WHEREAS, the Board notes that if DOB determines that the lowest level is a basement and, thus, contributes to the building's floor area, the proposal will not comply with the 5,373 sq. ft. (0.92 FAR) reflected on the plans and will need to be revised; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, and lot coverage, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 30, 2011"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,373 sq. ft. (0.92 FAR); a minimum open space of 3,656 sq. ft., and a maximum lot coverage of 37 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, March 6, 2012.

## 130-11-BZ

### CEQR #12-BSA-020K

APPLICANT – Law Office of Fredrick A. Becker, for Leah Gutman and Arthur Gutman, owners.

SUBJECT – Application September 2, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3600 Bedford Avenue, between Avenue N and Avenue O, Block 7678, Lot 90, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 16, 2011, acting on Department of Buildings Application No. 320329881, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.
3. Proposed plans are contrary to ZR 23-461 in that the proposed side yards are less than the minimum required.
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, with continued hearings on January 31, 2012 and February 14, 2012, and then to decision on March 6, 2012; and

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

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

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue N and Avenue O,

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within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 3,466.43 sq. ft. (0.87 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 3,466.43 sq. ft. (0.87 FAR) to 4,163.28 sq. ft. (1.04 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 50.66 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3'-0" (a minimum width of 5'-0" is required for each side yard) and to provide a side yard with a width of 8'-0" along the southern lot line; and

WHEREAS, the proposed enlargement will maintain the portion of the rear yard with an existing depth of 17'-11" and provide a rear yard with a depth of 23'-8" for the new portion of the building (a minimum rear yard depth of 30'-0" is required); and

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

WHEREAS, at hearing, the Board directed the applicant to review the covered terrace to confirm that it does not contribute to floor area and to review the front dormer for compliance with the parameters of the building envelope; and

WHEREAS, in response, the applicant provided revised plans which note that the terraces are subject to DOB approval and reduced the width of the front dormer; and

WHEREAS, the applicant submitted a study of FARs in the area which reflects that there are 11 homes on adjacent blocks between Avenue N and Avenue O with FAR in excess of 1.0 and concludes that the proposed FAR is compatible with the neighborhood character; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

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

N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 19, 2012"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,163.28 sq. ft. (1.04 FAR); an open space ratio of 50.66 percent; a side yard with a minimum width of 3'-0" along the northern lot line; a side yard with a minimum width of 8'-0" along the southern lot line; and a rear yard with minimum depths ranging from 17'-11" to 23'-8", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve all balconies and terraces;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, March 6, 2012.

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## 159-11-BZ

### CEQR #12-BSA-031Q

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; JWSTKD II, lessee.

SUBJECT – Application October 21, 2011 – Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment (*Hi Performance Tai Kwon Do*). C4-1 zoning district.

PREMISES AFFECTED – 212-01 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue between Bell Boulevard and Corporal Kennedy Street, Block 5900, Lot 2, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Todd Dale.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Queens Borough  
Commissioner, dated September 12, 2011, acting on  
Department of Buildings Application No. 420480125, reads  
in pertinent part:

Proposed physical culture establishment is not  
permitted as of right and requires a special permit  
from the NYC BSA pursuant to ZR Section 73-  
36; and

WHEREAS, this is an application under ZR §§ 73-36  
and 73-03, to permit, on a site located within a C4-1 (R5)  
zoning district, the operation of a physical culture  
establishment (PCE) on a portion of the first floor and cellar  
of a one-story commercial building, contrary to ZR § 32-10;  
and

WHEREAS, a public hearing was held on this  
application on January 24, 2012, after due notice by  
publication in *The City Record*, with a continued hearing on  
February 14, 2012 and then to decision on March 6, 2012;  
and

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

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

WHEREAS, the subject site is located on the corner of  
26<sup>th</sup> Avenue and Bell Boulevard, within a C4-1 (R5) zoning  
district; and

WHEREAS, the subject site has a total lot area of  
604,500 sq. ft. and is occupied by the Bay Terrace shopping  
center; and

WHEREAS, the applicant states that the shopping  
center comprises multiple buildings on the subject site and  
that the proposed PCE will occupy a single storefront in a  
one-story multi-storefront commercial building located  
along 26<sup>th</sup> Avenue; and

WHEREAS, the proposed PCE will occupy 1,609 sq. ft.  
of floor area on the first floor, with an additional 460 sq. ft. of  
floor space located in the cellar; and

WHEREAS, the PCE will be operated as High  
Performance Taekwondo Studio; and

WHEREAS, the proposed hours of operation for the  
PCE are: Monday through Saturday, from 1:00 p.m. to 9:00  
p.m.; and closed on Sunday; and

WHEREAS, the applicant represents that the services  
at the PCE include facilities for instruction and programs for  
physical improvement; and

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

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

satisfactory; and

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

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

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

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

WHEREAS, the Board has conducted an environmental  
review of the proposed action and has documented relevant  
information about the project in the Final Environmental  
Assessment Statement, CEQR No. 12BSA031Q, dated  
October 3, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and  
Appeals issues a Negative Declaration prepared in accordance  
with Article 8 of the New York State Environmental  
Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the  
Rules of Procedure for City Environmental Quality Review  
and Executive Order No. 91 of 1977, as amended, and makes  
each and every one of the required findings under ZR §§ 73-36  
and 73-03, to permit, on a site located within a C4-1 (R5)  
zoning district, the operation of a physical culture  
establishment on a portion of the first floor and cellar of a  
one-story commercial building, contrary to ZR § 32-10; *on  
condition* that all work shall substantially conform to  
drawings filed with this application marked “Received  
December 13, 2011- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 6,  
2022;

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

THAT all massages shall be performed by New York  
State licensed massage therapists;

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

THAT fire safety measures shall be installed and/or

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maintained as shown on the Board-approved plans;

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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

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

Adopted by the Board of Standards and Appeals, March 6, 2012.

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## 179-11-BZ

### CEQR #12-BSA-043Q

APPLICANT – Herrick, Feinstein LLP, for Ridgedale Realty Company, LLC, owner; Kings of Queens Retro/Retro Fitness of Glendale, lessee.

SUBJECT – Application November 30, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*New Retro Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 65-45 Otto Road, between 66<sup>th</sup> Street and 66<sup>th</sup> Place. Block 3667, Lot 625. Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Jennifer Dickson.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 27, 2012, acting on Department of Buildings Application No. 420497439, reads in pertinent part:

The subject property to be used as a physical culture establishment is contrary to Section ZR 42-10 and requires a special permit from the NYC BSA pursuant to Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-1 zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor of a one-story warehouse building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, with a continued hearing on February 14, 2012, and then to decision on March 6, 2012; and

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

WHEREAS, Community Board 5, Queens, recommends approval of this application, with the following conditions: (1) the sidewalk along Otto Road be repaired; and (2) a grass strip be planted along the curbline, adjacent to the street trees; and

WHEREAS, the subject site is located on the north side of Otto Road, between 66<sup>th</sup> Street and 66<sup>th</sup> Place, within an M1-1 zoning district; and

WHEREAS, the subject site has a total lot area of 130,150 sq. ft. and is occupied by a one-story warehouse building; and

WHEREAS, the proposed PCE will occupy 21,109 sq. ft. of floor area on a portion of the first floor and mezzanine of the one-story warehouse building located on the site; and

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

WHEREAS, the proposed hours of operation for the PCE are 6:00 a.m. to 12:00 a.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

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

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

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

WHEREAS, in response to concerns raised by the Board, the applicant submitted plans clarifying that pedestrian access to the site will be achieved through a striped pedestrian way leading from the entrance to the site on Otto Street to the entrance to the PCE at the south side of the building; and

WHEREAS, in response to the issues raised by the Community Board, the applicant states that it will repair the sidewalk along Otto Road during its renovation of the building for PCE use; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant



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information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA043Q, dated October 13, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-1 zoning district, the operation of a physical culture establishment on a portion of the first floor and mezzanine of a one-story warehouse building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2011" - (3) sheets and "Received February 22, 2012" - (1) sheet and *on further condition*:

THAT the term of this grant will expire on March 6, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the sidewalk along Otto Road will be repaired;

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

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

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

THAT substantial construction will be completed in accordance with ZR §73-70;

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

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

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the

Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 6, 2012.

## 184-11-BZ

### CEQR #12-BSA-046K

APPLICANT – Law Office of Fredrick A. Becker, for Esther Snyder and Robert Snyder, owner.

SUBJECT – Application December 5, 2011 – Special Permit §73-622 for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 945 East 23<sup>rd</sup> Street, east side of East 23<sup>rd</sup> Street between Avenue T and J, Block 7587, Lot 26, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 4, 2011, acting on Department of Buildings Application No. 320350758, reads in pertinent part:

- Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of .50.
- Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.
- Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, and then to decision on March 6, 2012; and

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

WHEREAS, Community Board 14, Brooklyn,

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recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 23<sup>rd</sup> Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,600 sq. ft., and is occupied by a single-family home with a floor area of 2,698.36 sq. ft. (0.59 FAR); and

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

WHEREAS, the applicant seeks an increase in the floor area from 2,698.36 sq. ft. (0.59 FAR) to 4,621.53 sq. ft. (1.01 FAR); the maximum permitted floor area is 2,300 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 53.8 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

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

WHEREAS, at hearing, the Board raised concerns about whether the rear terrace should be included in floor area calculations and whether the applicant was permitted to add a second curb cut; and

WHEREAS, the Board noted that the terrace and curb cut conditions were subject to DOB review and approval and that it was not approving either condition absent DOB's review and approval; and

WHEREAS, accordingly, the Board directed the applicant to note on its building plans that the terrace and curb cut were subject to DOB review; and

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

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does

not comply with the zoning requirements for floor area ratio, open space, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received December 5, 2011"-(9) sheets, "February 21, 2012"-(1) sheet and "March 6, 2012"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,621.53 sq. ft. (1.01 FAR); an open space ratio of 53.8 percent; and a rear yard with a depth of 20'-0", as illustrated on the BSA-approved plans;

THAT the attic floor area will be limited to 726.29 sq. ft.;

THAT DOB will review the terraces and porches for compliance;

THAT DOB will review the addition of a second curb cut for compliance;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, March 6, 2012.

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## 188-11-BZ

### CEQR #12-BSA-049M

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LP, owner.

SUBJECT – Application December 9, 2011 – Variance (§72-21) to allow for the conversion of floors two through six from commercial use to residential use, contrary to use regulations (§42-10). M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Frank E. Chaney.

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

THE VOTE TO GRANT –

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

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## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 6, 2011, acting on Department of Buildings Application No. 120879399, reads in pertinent part:

Proposed residential use on floors 2-6 not permitted in an M1-6 district; contrary to ZR Section 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-6 zoning district, the conversion of the second through sixth floors of a six-story commercial building to residential use, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 7, 2012 after due notice by publication in the *City Record*, and then to decision on March 6, 2012; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of the application, but states that it favors retaining the second floor as commercial space for the current tenant, a jazz cultural center, which it deems to be a valuable resource for the community; and

WHEREAS, the subject site is an irregular L-shaped lot located near the southeast corner of the intersection of Spring Street and Hudson Street, within an M1-6 zoning district; and

WHEREAS, the site has 28 feet of frontage on Spring Street, 19.5 feet of frontage on Hudson Street, and a total lot area of 4,225 sq. ft.; and

WHEREAS, the site is occupied by a six-story L-shaped commercial building with a floor area of 24,054 sq. ft. (5.69 FAR); and

WHEREAS, the applicant states that the subject lot and building wrap around a vacant corner lot (Lot 9) which is owned by the Port Authority of New York and New Jersey (the "Port Authority") and is used as a parking lot; and

WHEREAS, the applicant further states that an approach ramp to the Holland Tunnel runs directly beneath the subject building, for which there is an approximately 35-ft. wide subsurface easement that runs across the middle of the subject site (the "Tunnel Easement"); and

WHEREAS, the applicant states that the building is currently partially vacant, with an eating and drinking establishment (Use Group 6) at the first floor and offices (Use Group 6) that are currently 50 percent vacant above; and

WHEREAS, the applicant proposes to convert the second through sixth floors of the building from commercial to residential use, with the first floor continuing to be occupied by a conforming commercial use; and

WHEREAS, the applicant states that the proposed building will have one loft dwelling unit on each of floors two through six, for a total of five dwelling units; and

WHEREAS, because residential use is not a permitted use in the subject M1-6 zoning district, the subject variance application was filed; and

WHEREAS, on March 14, 2000, under BSA Cal. No.

145-99-BZ, the Board denied a previous variance application to permit the conversion of the second through sixth floors of the subject building to residential use, finding that the applicant failed to establish that there were practical difficulties or unnecessary hardship in complying with the use provisions, primarily because "floors two through six were at or near full occupancy" and "the offices seemed to be functioning well;" and

WHEREAS, subsequently, the applicant filed a request for a rehearing of the previously denied variance application pursuant to Section 1-10(e) of the Board's Rules of Practice and Procedure, and on May 24, 2011, under BSA Cal. No. 145-99-BZ, the Board granted the applicant's request for a rehearing, finding that the applicant had identified substantial evidence which supports the conclusion that there has been a material change in circumstances since the 1999 application; and

WHEREAS, accordingly, the applicant subsequently filed the subject variance application; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformity with applicable regulations: (1) the small and narrow size of the site and building, and its irregular L-shape; and (2) the proximity of the Holland Tunnel approach ramp and the presence of the Tunnel Easement on the site; and

WHEREAS, the applicant notes that the site is a 4,225 sq. ft. L-shaped parcel with 28 feet of frontage on Spring Street and only 19.5 feet of frontage on Hudson Street, and that if each side of the property were considered a separate lot, the Spring Street side would be a 2,470 sq. ft. lot and the Hudson Street side would be a 1,775 sq. ft. lot; and

WHEREAS, the applicant states that the two sides of the building are connected at the rear for only 15 contiguous linear feet and because the building is not built full to the rear lot lines, the footprint is even smaller than the lot size, at 4,009 sq. ft., with the Spring Street side of the building having a floor area of 2,254 sq. ft. and the Hudson Street side of the building having a floor area of 1,755 sq. ft.; and

WHEREAS, the applicant further states that while the floor plates of the building are small and narrow, due to the width of the exterior brick walls of the building, the interior space is even more constrained with an interior wall-to-wall dimension of only 24 feet on the Spring Street side of the building and 15.5 feet on the Hudson Street side of the building; thus, the usable floor area on each floor of the building is approximately 3,169 sq. ft.; and

WHEREAS, the applicant states that because of its small, narrow and irregular shape, the building has an unusually high ratio of exterior walls to usable interior space, with approximately 1.4 sq. ft. of exterior wall to each sq. ft. of usable interior space; and

WHEREAS, the applicant further states that the shape of the building also results in a disproportionate share of the interior floor area being devoted to core functions, including elevators, stairways and bathrooms, as approximately 990 sq. ft. of the second through sixth floors are occupied by such core functions, representing 24.7 percent of each floor's gross floor

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area and 28.4 percent of each floor's usable interior space; and

WHEREAS, the applicant states that the small, narrow and irregular shape of the site and the building result in awkward floor plates that are inefficient and unattractive to modern office or manufacturing users; and

WHEREAS, as to the Subsurface Easement, the applicant states that an approach ramp to the Holland Tunnel is located nine feet below the cellar of the subject building, and as a result the 35-ft. wide Tunnel Easement runs across the middle of the site; and

WHEREAS, the applicant notes that there is no cellar in the middle portion of the building due to the tunnel approach and the Tunnel Easement, and that Port Authority regulations prohibit the installation of piles in close proximity to the tunnel approach; and

WHEREAS, the applicant states that, as a result of the lack of a cellar and the inability to install piles, it is not feasible to enlarge the building or redevelop the site to utilize more or all of the 10.0 FAR allowed for conforming uses in the subject M1-6 zoning district; and

WHEREAS, as to the uniqueness of the aforementioned physical conditions, the applicant provided a radius diagram and land use map which reflects that the subject site is the only property in the surrounding area that is small, narrow and L-shaped, and located directly above the Holland Tunnel approach; and

WHEREAS, the applicant states that returning the building to a conforming industrial use would require a major investment to upgrade the building's systems (including elevators and electrical) to industrial capacity, and that even if such investment were made, the building would not be feasible for industrial use due to the small, oddly-shaped floor plates that would not be suitable for a modern industrial use; and

WHEREAS, the applicant notes that when the owner purchased the property in 1990 in its previous configuration as a warehouse with offices, the building was vacant because it had been unable to attract any industrial tenants; and

WHEREAS, the applicant represents that the building would be even less able to attract industrial tenants today because the character of the area has materially changed from being primarily industrial to being primarily a mix of office and residential uses; and

WHEREAS, the applicant states that the small and irregular floor plates also make the building inefficient and unattractive for modern office uses; and

WHEREAS, the applicant represents that since the time of the original variance application in 1999, the number and frequency of vacancies in the building's office units have continually increased as more and newer offices have become available within the surrounding neighborhood; and

WHEREAS, the applicant submitted a table reflecting that, as of the date of the subject application, eight and one-half of the building's 17 office units (50 percent) are vacant, representing 55.8 percent of the rentable office floor space and 43.3 percent of the office rent roll; and

WHEREAS, the applicant states that two additional units, after having been vacant for an extended period of time, are occupied by family members of the owner, paying nominal

rents on a week-to-week basis until such time as a tenant can be found to lease the unit; if these two units are also counted as vacant, the resulting ten and one-half vacant units would represent 61.8 percent of all units, 61.5 percent of the rentable office floor space, and 47.4 percent of the office rent roll; and

WHEREAS, the applicant represents that conversion of the building to a conforming community facility use is also infeasible; and

WHEREAS, the applicant states that, of the permitted Use Group 4A community facility uses, most are not-for-profit and/or religious and therefore the only one for which a reasonable return might be possible is an ambulatory diagnostic or treatment health care facility; however, for the same reasons that the building is unsuitable for modern conforming industrial and office use, it would be inefficient and therefore infeasible for a modern health care facility; and

WHEREAS, specifically, the applicant states that providing the necessary ADA-compliant vertical and horizontal circulation, bathrooms, patient examining rooms, and offices for a modern health care facility would not be possible within the constraints of the building's narrow floor plates; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no reasonable possibility that the development of the property in conformance with the use will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study which analyzed (1) the continued use of the building as a six-story conforming office building with a variety of small office suites on floors two through six and ground floor retail use, and (2) the proposed use of the building as a six-story mixed-use building with retail use and a small residential lobby on the ground floor and a total of five residential units (one unit per floor) on floors two through six; and

WHEREAS, the feasibility study concluded that the conforming office scenario would not realize a reasonable return, but that the proposed building would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the immediate area is characterized predominantly by a mix of residential and commercial uses; and

WHEREAS, the applicant states that the surrounding neighborhood has undergone significant changes since the

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# MINUTES

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time of the Board's denial of the original variance application; and

WHEREAS, as to the Hudson Square area's office space market, the applicant states that nearly 2.6 million square feet of formerly industrial floor area in the surrounding area has been converted to modern office use and identifies the following industrial buildings which have been converted to commercial office space since the 1999 application: One Hudson Square (a 16-story, 993,903 sq. ft. building); 304 Hudson Street (an eight-story, 230,000 sq. ft. building); 326 Hudson Street (a 23-story, 345,621 sq. ft. building); 348 Hudson Street (a nine-story, 259,000 sq. ft. building); and 341 Hudson Street (a 17-story, 797,000 sq. ft. building); and

WHEREAS, additionally, the applicant identifies the Business Incubator at 160 Varick Street, a City-subsidized facility for small businesses, which is currently at full capacity with 35 businesses; and

WHEREAS, as to the neighborhood context, the applicant cites to several rezonings in the neighborhood which have taken place since the 1999 denial, which include (1) the 2003 Hudson Square Rezoning, which rezoned a portion of the area, just west of the site from M1-6 and M2-4 zoning districts to a C6-2A zoning district, which permits residential use as-of-right; (2) the 2006 North Tribeca Rezoning, which rezoned a four-block area south of Canal Street from M1-5 to C6-2A and C6-3A, which permits residential uses as-of-right; and (3) the 2010 North Tribeca Rezoning, which rezoned the remaining M1-5 area to C6-2A; and

WHEREAS, the applicant states that the Hudson Square and North Tribeca rezonings have led to several residential conversions and the construction of new residential buildings at sites including: 300 Spring Street, 505 Greenwich Street, 255 Hudson Street, and 479 Greenwich Street; and

WHEREAS, the applicant cites to additional actions such as a proposed Hudson Square Special District, which would allow for more residential use in the area; and Board use variances between 2005 and 2007, which have allowed for residential use within M1-5 and M1-6 zoning districts in the area; and

WHEREAS, the applicant represents that the above-mentioned factors reflect that the surrounding area is characterized by a mixed-use area of primarily commercial and residential uses, and that the proposed conversion of floors two through six of the building to create five loft dwelling units will not alter the essential character of the neighborhood; and

WHEREAS, the applicant notes that the proposed conversion of the second through sixth floors will be confined to the existing building envelope and will not result in any additional floor area; and

WHEREAS, the applicant represents that the existing conforming commercial use on the first floor will remain and is compatible with the mix of uses in the area; and

WHEREAS, the applicant represents that the proposed conversion meets the light and air requirements of the Multiple

Dwelling Law; and

WHEREAS, at hearing, the Board questioned whether the proposed residential loft units complied with the requirements of the Building Code with respect to distance from a required means of egress; and

WHEREAS, in response, the applicant states that the Building Code requires the proposed residential loft building to have an automatic sprinkler system, two means of egress, and a maximum travel distance between any point in a dwelling unit to a means of egress of 200 feet for a sprinklered building; and

WHEREAS, the applicant submitted revised plans reflecting that an automatic sprinkler system will be installed in the building, and states that two means of egress will be provided for the residential loft units by the "scissor" stairs (a pair of criss-crossing stairs) located on the Spring Street side of the building, and the maximum travel distance to a means of egress in the building is approximately 105 feet; and

WHEREAS, as to the Community Board's request that the second floor of the building remain commercial space to accommodate the jazz cultural center tenant, the applicant notes that a Stipulation of Settlement dated July 7, 2010 by the Civil Court, orders the jazz cultural center to vacate the site due to over \$50,000 in rent arrears; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the existing unique physical conditions cited above; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA049M, dated February 18, 2012; and

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

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

# MINUTES

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-6 zoning district, the conversion of the second through sixth floors of a six-story commercial building to residential use, which is contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 5, 2012" – twelve (12) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: six stories; 20,045 sq. ft. (4.74 FAR) of residential floor area on the second through sixth floors, 4,009 sq. ft. (0.95 FAR) of commercial floor area on the first floor, a total floor area of 24,054 sq. ft. (5.69 FAR); and five dwelling units, as indicated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 6, 2012.

## 21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 1:30 P.M., for continued hearing.

## 112-11-BZ

APPLICANT – Eric Palatnik, P.C., for Louis N. Petrosino, owner.

SUBJECT – Application August 9, 2011 – Variance (§72-21) to legalize the extension of the use and enlargement of the zoning lot of a previously approved scrap metal yard (UG 18), contrary to §32-10. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54<sup>th</sup> Street. Block 6947, Lot 260. Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for continued hearing.

## 177-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for St Anns ABH Owner LLC, owners.

SUBJECT – Application November 16, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within portions of an existing building. C2-3(R7X) zoning district.

PREMISES AFFECTED – 601 East 156<sup>th</sup> Street, aka 800 St. Ann's Avenue, north east corner of East 156<sup>th</sup> Street and St. Ann's Avenue, Block 2618, Lot 7501, Borough of Bronx.

### COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 20, 2012, at 1:30 P.M., for decision, hearing closed.

## 195-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.

SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2070 East 21<sup>st</sup> Street, west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for continued hearing.

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# MINUTES

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**4-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56<sup>th</sup> and Park (NY) Owner, LLC.

SUBJECT – Application January 11, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Wright Fit*). C5-3/C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 432-440 Park Avenue, northwest corner of Park Avenue and East 56<sup>th</sup> Street, Block 1292, Lot 33, 43, 45, 46, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Robert E. Flahive.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 27, 2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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

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Volume 97, Nos. 12-13

March 29, 2012

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

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# DOCKET

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New Case Filed Up to March 20, 2012  
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## 51-12-A

46 Tioga Walk, East of Beach 216 Street, 45' north of 6th Avenue, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. The proposed re-construction of the existing building is located on a site where the building lies partially in the bed of a mapped Beach 216 Street as per Art.3 Sect.#35 of the GCL and contrary to the Department of Building policy. The proposed upgrade of the private disposal system is not located in the bed of a mapped street. R4 district.  
-----

## 52-12-A

35 Janet Lane, north of Janet Lane, east of Beach 203 Street., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. The proposed re-construction of the existing building is located on a site where the building lies in the bed of a mapped street as per Art 3 Sect. 35 of the GCL, is not fronting a mapped street as per Art 3 Sect. 36 GCL and contrary to the Department of Buildings policy. The proposed upgrade of the private disposal system is located in the bed of a mapped street. R4 district.  
-----

## 53-12-BZ

1232 East 27th Street, west side of East 27th Street, between Avenue L and Avenue M., Block 7644, Lot(s) 59, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to Z.R.§73-622, as amended to request a special permit to allow the enlargement of a single family residence located in a residential (R2) zoning district. R2 district.  
-----

## 54-12-BZ

65-39 102nd Street, north side of 102nd Street,northeast corner of 66th Avenue, Block 2130, Lot(s) 14, Borough of **Queens, Community Board: 6**. Construction of a new four story community facility (Use Group4) and residential building (Use Group 2) with three dwellings units in an R5 zoning district. R5 district.  
-----

## 55-12-BZ

762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot(s) 19, Borough of **Brooklyn, Community Board: 1**. Application to legalize the existing use group 3 religious based not for profit school which is contrary to ZR§42-00 and therefore requires a special permit from the NYC BSA. M1-2 district.  
-----

## 56-12-BZ

168 Norfolk Street, located between Shore Boulevard and Oriental Boulevard, Block 8756, Lot(s) 25, Borough of **Brooklyn, Community Board: 15**. The premises is improved with an existing residential structure (single family home) which is a two story dwelling without a cellar, the requested approval seeks permission to enlarge the existing single family residential structure in accordance with the provisions of Z.R.§73-622. R3-1 district.  
-----

## 57-12-BZ

2670 East 12th Street, between Shore Parkway and Gilmore Court., Block 7455, Lot(s) 85, Borough of **Brooklyn, Community Board: 15**. This application is filed pursuant to Z.R.§73-622, as amended to request a Special Permit to enlarge a one-story dwelling in a residential zonig district (R4) and to vary the lot coverage, floor area, open space, rear yard and side yard requirements of the zoning resolution. R4 district.  
-----

## 58-12-BZ

3960 Bedford Avenue, west side of Bedford Avenue between Avenue R and Avenue S., Block 6830, Lot(s) 30, Borough of **Brooklyn, Community Board: 15**. Special Permt (ZR 73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and opens space (23-141); side yards (23-461); less than the required rear yard (23-47). R3-2 zoning district. R3-2 district.  
-----

## 59-12-BZ

240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue., Block 8103, Lot(s) 25, Borough of **Queens, Community Board: 11**. Variance (72-210 Proposed reconstruction of an existing landmarked building with non-complying front yard (ZR 23-45) in the bed of a mapped street. R1-2 zoning district. R1-2 district.  
-----

## 60-12-A

240-27 Depew Avenue, north side of Depew Avenue, 106.23' east of 40th Avenue., Block 8103, Lot(s) 25, Borough of **Queens, Community Board: 11**. Proposed reconstruction and enlargement of an existing landmarked single family dwelling in the bed of 40th Avenue contrary to General City Law Section 35 . R1-2 Zoning District . R1-2 district.  
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# DOCKET

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**61-12-BZ**

216 Lafayette Street, between Spring Street and Broome Street, with approximately 25' of frontage along Lafayette Street., Block 482, Lot(s) 28, Borough of **Manhattan, Community Board: 02**. This application is filed pursuant ZR§72-21, as amended, to request a variance of Section 42-14(D)(2)(b) in order to permit a UG6 restaurant in a portion of the cellar and first floor of the existing two-story and cellar building located at the premises. M1-5B district.

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**65-12-BZ**

1140 East 28th Street, west side of East 28th Street distant 313 south of Avenue K., Block 7627, Lot(s) 62, Borough of **Brooklyn, Community Board: 14**. Existing one family dwelling to be enlarged at rear all floors, the second floor will be enlarged at front, add new attic. R2 district.

-----

**66-12-BZ**

223-237 St. Nicholas Avenue, aka 305 W. 121st Street and 300 W.122nd Street. West side of St. Nicholas Avenue, between W. 121st Street and W. 122nd Street., Block 1948, Lot(s) 30, 35, Borough of **Manhattan, Community Board: 10**. Variance to modify the applicable requirements of the Zoning Resolution for use (ZR§22-10), lot coverage (ZR§24-11) and parking (ZR§25-23) to facilitate development of a mixed use building containing a FRESH Program foot store, a privately operated preschool and 164 non-subsidized, middle income apartments. R7A,R8A/C2-4 district.

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

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# CALENDAR

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**APRIL 3, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 3, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **319-53-BZ**

APPLICANT – Ficara & Associates, P.C., by Majed El Jamal, for 22<sup>nd</sup> Street Realty LLC, owner.

SUBJECT – Application August 16, 2011 – Pursuant to (ZR 11-411) an Extension of Term for the continued operation of an Automotive Repair Shop with no body work which expired on January 31, 2011; Waiver of the Rules. R-5 zoning district.

PREMISES AFFECTED – 1135 East 222<sup>nd</sup> Street, northwest corner of Eastchester Road, Block 4900, Lot 12, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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### **808-55-BZ**

APPLICANT – Sheldon Lobel, P.C., for 35 Bell Realty Inc., owner; Cumberland Farms, Inc., lessee.

SUBJECT – Application February 14, 2012 – Pursuant to ZR 11-411 for an Extension of Term for the continued operation of a gasoline service station (*Gulf*) with accessory convenience store which expired on March 27, 2012; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, southwest corner of the intersection formed by Bell Boulevard and 35<sup>th</sup> Avenue, Block 6169, Lot 6, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### **64-96-BZ**

APPLICANT – Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.

SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.

PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14<sup>th</sup> Avenue, Block 4645, Lot 3, Borough of Queens.

**COMMUNITY BOARD #7Q**

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### **256-02-BZ**

APPLICANT – Goldman Harris LLC, for 160 Imlay Street Real Estate, owner.

SUBJECT – Application February 10, 2012 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the development of a vacant six story manufacturing building, and the addition of three floors, for residential UG2 which expired on March 18, 2012. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, bounded by Imlay, Verona and Commerce Streets and Atlantic Basin.

**COMMUNITY BOARD #6BK**

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## **APPEALS CALENDAR**

### **173-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Southside Manhattan View LLC, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking determination that the owner of the premises has acquired a common law vested rights to complete construction under the prior R4 zoning. R4-1 Zoning district.

PREMISES AFFECTED – 68-10 58<sup>th</sup> Avenue, south side of 58<sup>th</sup> Avenue, 80' east of intersection of 58<sup>th</sup> Avenue and Brown Place, Block 2777, Lot 11, Borough of Queens.

**COMMUNITY BOARD #5Q**

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### **25-12-A**

APPLICANT – Slater & Beckerman, LLP for F.B Capital Inc., owners

SUBJECT – Application February 2, 2012 – Appeal challenging a Department of Buildings determination that an illegal non complying residential portion of a building in the required rear yard may be reconstructed pursuant to ZR §54-41. R8B Zoning District.

PREMISES AFFECTED – 110 East 70<sup>th</sup> Street, south side of East 70<sup>th</sup> Street, between Park Avenue and Lexington Avenue, block 1404, Lot 67, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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### **27-12-A**

APPLICANT – Greenberg Traurig, LLP, for F.B. Capital, LLC, owner.

SUBJECT – Application February 6, 2012 – Appeal challenging a Department of Buildings determination that the reconstruction of a building that did not solely contain a one family residence and had more than 75% of the floor area demolished is contrary to ZR Section 54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70<sup>th</sup> Street, north side of East 70<sup>th</sup> Street, 125' east of Park Avenue and 260' west of Lexington Avenue, Block 1404, Lot 67, Borough of Manhattan.

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# CALENDAR

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## COMMUNITY BOARD #8M

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**APRIL 3, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 3, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### **93-11-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (ZR §73-19) to allow, in a M1-1 zoning district, the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*).

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

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### **107-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.

SUBJECT – Application August 3, 2011 – Variance (§72-21) to permit the enlargement of a synagogue (*Congregation Yeshiva Bais Yitzchok*) contrary to the bulk requirements for community facility buildings. R4-1 district.

PREMISES AFFECTED – 1643 East 21<sup>st</sup> Street, east side of 21<sup>st</sup> Street between Avenue O and P, Block 6768, Lot 84, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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### **22-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner.

SUBJECT – Application February 1, 2012 – Special Permit (73-36) to allow in a C1-9 zoning district the proposed enlargement of an existing Physical Culture Establishment (*SoulCycle*). The existing PCE has a prior BSA special permit approval (BSA Calendar No. 20-10-BZ).

PREMISES AFFECTED – 1470 Third Avenue, northwest corner of East 83<sup>rd</sup> Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 20, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Hinkson and Commissioner Montanez.  
Absent: Commissioner Ottley-Brown.

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### SPECIAL ORDER CALENDAR

#### 11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.  
SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

#### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for the operation of a restaurant (Use Group 6) in a C2-2 (R3-2) zoning district, which expired on October 5, 2011; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in the City Record, with continued hearings on January 24, 2012 and February 28, 2012, and then to decision on March 20, 2012; and

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

WHEREAS, the site is located on the northeast corner of Kissena Boulevard and Laburnum Avenue, within a C2-2 (R3-2) zoning district; and

WHEREAS, the subject site has a total lot area of 40,830 sq. ft.; and

WHEREAS, the site is occupied by a one-story building operated as a restaurant (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 1958 when, under BSA Cal. No. 788-57-BZ, the Board granted a variance to permit the

construction of a one-story storage garage and motor vehicle repair shop, with two gasoline dispensing pumps, for a term of 20 years; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, on March 15, 1994, under the subject calendar number, the Board granted a special permit under ZR § 11-413 to permit the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking, for a term of ten years, which expired on March 15, 2004; and

WHEREAS, most recently, on October 5, 2010, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on March 15, 2014, and an amendment pursuant to ZR § 11-412 to permit certain modifications to the building that fit within the ZR § 12-10 definition of “incidental alterations,” including the modification of internal partitions on the ground floor, the addition of an open overhang at the rear of the building, and the replacement of the building façade; a condition of the grant was that a certificate of occupancy be obtained by October 5, 2011; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, the Board notes that, while certain modifications to the building were permitted in the October 5, 2010 grant, the Board determined that it did not have the authority to grant the other building modifications the applicant proposed to legalize, including the construction of a two-story enlargement at the rear of the building, the construction of a glass enclosure used for storage on the northern side of the building, and the construction of bulkheads providing roof access, because the Board had previously permitted a new non-conforming use on the site pursuant to ZR § 11-413 in the March 15, 1994 grant, and ZR § 11-412 states that “no structural alterations, extensions or enlargements shall be authorized for a new-non-conforming use authorized under the provisions of Section 11-413 (Change of use);” and

WHEREAS, accordingly, the Board directed the applicant to remove the enlargement located at the rear of the building, the glass enclosure, and the bulkhead, as these areas contributed to floor area and were therefore impermissible enlargements under ZR § 11-412; and

WHEREAS, the applicant states that subsequent to the Board’s grant, the two-story enlargement at the rear of the building and the rooftop bulkheads have been removed, but that a permit had not been obtained to remove the glass enclosure; and

WHEREAS, at hearing, the Board directed the applicant to remove the glass enclosure on the northern side of the building and to remove the storage trailer and refrigerator unit that have been added to the rear of the site since the Board’s prior grant; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of the glass enclosure, the storage trailer and the refrigerator unit; and

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

# MINUTES

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, as adopted on March 15, 1994, to grant a one-year extension of time to obtain a certificate of occupancy, to expire on March 20, 2013; on condition that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and on further condition:

THAT use of the site shall be limited to a restaurant (Use Group 6) with accessory parking;

THAT all signage shall comply with C2 zoning district regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by March 20, 2013;

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

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

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

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

(DOB Application No. 400475776)

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## 11-01-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for P.J. Christy, Inc., owner.

SUBJECT – Application August 8, 2011 – Extension of Term for a gasoline service station (BP British Petroleum) which expired on August 7, 2011 and Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2006. C1-2/R5 zoning district.

PREMISES AFFECTED – 586/606 Conduit Boulevard, Pitkin Avenue and Autumn Avenue on the west, Block 4219, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Todd Dale.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, an extension of term for a gasoline service station (Use Group 16) with an accessory convenience store, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2012, and then to decision on March 20, 2012; and

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

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

WHEREAS, the subject site is a triangular-shaped lot comprising the entirety of Block 4219, bounded by Conduit Boulevard to the north, Pitkin Avenue to the south, and Autumn Avenue to the west, within a C1-2 (R5) zoning district; and

WHEREAS, the site has 177 feet of frontage along Conduit Boulevard, 159 feet of frontage along Pitkin Avenue, 96.5 feet of frontage along Autumn Avenue, and a total lot area of 9,144 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 23, 1961 when, under BSA Cal. No. 535-60-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubricatorium, minor auto repairs, car washing, utility room, office, sales, ground sign, and parking and storage of motor vehicles, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on May 23, 1991; and

WHEREAS, on August 7, 2001, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station with accessory uses, and to convert the existing automotive repair facility and offices into an accessory convenience store, for a term of ten years; a condition of the grant was that a new certificate of occupancy be obtained by August 7, 2002; and

WHEREAS, on July 26, 2005, the Board granted a one-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant now seeks an additional extension of the term and an extension of time to obtain a certificate of occupancy; and

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

WHEREAS, the applicant notes that subsequent to the Board's most recent grant, it obtained a temporary certificate of occupancy, which expired on November 10, 2011; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the signage on the site complies with the underlying C1 district signage regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the site complies with C1 district signage regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

# MINUTES

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 7, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from August 7, 2011, to expire on August 7, 2021, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on March 20, 2013; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received January 5, 2012’-(1) sheet and ‘March 20, 2012’-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on August 7, 2021;

THAT all signage on the site will comply with C1 district regulations;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by March 20, 2013;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 301092715)

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## 327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Amendment to a Variance (§72-21) to increase the size of an existing Synagogue and School (*Beth Gavriel*) and alter the facade. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, east side of 108<sup>th</sup> Street, between 66<sup>th</sup> Road and 67<sup>th</sup> Avenue, Block 2175, Lot 1, Borough of Queens.

## COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Nora Martins.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

**THE RESOLUTION** –

WHEREAS, this is an application for an amendment to a previously approved variance for the enlargement of a building occupied by a synagogue and religious school, within an R1-2

zoning district; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2012, and then to decision on March 20, 2012; and

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

WHEREAS, Community Board 6, Queens, states that it has no objection to this application; and

WHEREAS, the subject site is located on the east side of 108<sup>th</sup> Street, between 66<sup>th</sup> Road and 67<sup>th</sup> Avenue, within an R1-2 zoning district; and

WHEREAS, this application is submitted on behalf of Beth Gavriel Bukharian Congregation (the “Synagogue”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 2005 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing building occupied by both a synagogue and a religious school, which did not comply with the underlying zoning regulations for floor area, front yard, height, and setback, contrary to ZR §§ 24-11, 24-34, 24-521, and 24-551; and

WHEREAS, on September 15, 2009, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on September 15, 2012; and

WHEREAS, the applicant states that the enlargement approved in the 2005 grant consisted of (1) the addition of a first and second floor above the existing basement on the south side of the building, to provide additional classrooms for the school, and (2) the addition of a cellar, basement, first, and second floor enlargement to the north side of the building, to provide a gymnasium at the cellar level, to relocate the synagogue to the basement and first floor level, and to provide a study hall and library at the second floor; and

WHEREAS, the applicant further states that the building, as previously approved, had the following parameters: a floor area of 27,820 sq. ft. (1.39 FAR) (the maximum permitted floor area is 10,000 sq. ft. (0.50 FAR)); three front yards with depths of 27’-0” along the southern lot line, 15’-0” along the western lot line, and 10’-0” along the northern lot line (three front yards with minimum depths of 15’-0” each are required); a side yard with a width of 8’-0” along the eastern lot line (a side yard with a minimum width of 8’-0” is required); a height of 33’-2”, and encroachment into the sky exposure plane; and

WHEREAS, the applicant now requests an amendment to permit the extension of the enlargement at the cellar level, the creation of a sub-cellar, changes to the interior layout of the proposed enlargement at the cellar, basement, first, and second floor levels, and the modification of the proposed building facade; and

WHEREAS, specifically, the applicant proposes to: (1) split the approved double-height gymnasium on the north side of the building into two levels (a sub-cellar and cellar), with the sub-cellar containing a recreation area/indoor playground and storage room, and the cellar containing a general purpose room/school cafeteria and accessory kitchen; (2) extend the



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# MINUTES

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cellar level along the west side of the existing building and underneath the existing basement on the south side of the existing building, with the new proposed cellar space occupied by a mikvah, an accessory synagogue kitchen, and bathrooms; (3) replace the auditorium/lunchroom on the basement level with an accessory synagogue dining room; (4) alter the layout of the women's balcony on the first floor to provide a better view of the main synagogue below; (5) add a conference room, remove the resource room, and rearrange the storage rooms, offices, and bathrooms at the first floor to provide six classrooms and one computer room rather than the approved five classrooms; (6) replace the approved library and study hall at the second floor with three study rooms with movable walls; and (7) change the façade on the proposed enlarged building; and

WHEREAS, the applicant represents that the proposed amendment is necessary to meet the programmatic needs of the Synagogue, as the mikvah is an important programmatic need of an Orthodox synagogue, and the closest existing mikvah in the surrounding area is located in Flushing, Queens; and

WHEREAS, the applicant states that the division of the double-height cellar gymnasium into a sub-cellar level recreation area and a cellar level general purpose room/school cafeteria satisfies both the school's programmatic need for recreation and cafeteria space, and the Synagogue's programmatic need for a separate dining room by enabling the basement space previously approved for a lunchroom/auditorium to be used for an accessory synagogue dining room; and

WHEREAS, the applicant further states that the programmatic needs of the school are essentially the same as those specified in the Board's 2005 grant, and that the proposed amendment provides a more efficient layout, allowing for the addition of a computer room and a classroom; and

WHEREAS, the applicant states that the additional floor space proposed by this amendment (approximately 12,300 sq. ft.) does not contribute to floor area because it is located below grade on the sub-cellar and cellar levels, and that the proposed enlarged building, as amended, actually provides a slightly smaller floor area of 27,393 sq. ft. (1.37 FAR) than the previously approved building, and maintains the same height and yard dimensions; accordingly, no new waivers are required by the proposed amendment; and

WHEREAS, the applicant further states that the proposed amendment does not trigger any additional parking requirements beyond the six previously-approved spaces; and

WHEREAS, the applicant states that the anticipated pedestrian and vehicular traffic will not significantly differ from the conditions anticipated pursuant to the 2005 grant, as the majority of families in the congregation live within walking distance of the synagogue and are obligated to walk to services for reasons of religious observance on the Sabbath and holidays; and

WHEREAS, the applicant further states that attendance at the daily services and evening lectures is very limited, with only 20-25 attendees at daily morning services and ten to 15 attendees at the evening lectures

WHEREAS, the applicant further states that

approximately 95 percent of the students arrive and depart the school by school bus, and students are only dropped off or picked up by car on rare occasions when they are arriving late or need to leave early; and

WHEREAS, the applicant notes that the mikvah has a separate entrance from 67<sup>th</sup> Avenue, and it is only anticipated to be used by approximately ten women daily because religious observance dictates that women can only use the mikvah beginning 30 minutes past sundown for a duration of one hour; and

WHEREAS, at hearing, the Board directed the applicant to provide additional landscaping on the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting that landscaping will be provided along the 66<sup>th</sup> Road frontage and partially along the side lot line; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the variance are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, as adopted on June 7, 2005, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received December 9, 2011'– (12) sheets and 'February 14, 2012'–(1) sheet; and *on further condition*:

THAT landscaping will be provided and maintained as indicated on the BSA-approved plans;

THAT substantial construction will be completed by March 20, 2016, in accordance with ZR § 72-23;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 401994828)

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## **442-42-BZ**

APPLICANT – Eric Palatnik, P.C., for Cropsey-20th Avenue Corp, owner.

SUBJECT – Application November 17, 2011 – Amendment (§11-412) to enlarge an existing gasoline service station (*Shell*) and legalize the conversion of repair bays to an accessory convenience store. R-5 zoning district.

PREMISES AFFECTED – 2001/2011 Cropsey Avenue, northeast corner of 20<sup>th</sup> Avenue and Cropsey Avenue, Block 6442, Lot 5, Borough of Brooklyn.

## **COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Eric Palatnik.

# MINUTES

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for continued hearing.

## 764-56-BZ

APPLICANT – Alfonso Duarte, P.E., for Anthony Panvini, owner.

SUBJECT – Application December 2, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses and the sale of used cars (UG 16B), which expires on October 22, 2012. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, north side between Hollis Ct., Boulevard and 201<sup>st</sup> Street, Block 741, Lot 325,000.00, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for decision, hearing closed.

## 820-67-BZ

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of Term of an approved Variance (§72-21) for the operation of a automotive repair shop (UG16) which expired on November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for adjourned hearing.

## 348-75-BZ

APPLICANT – Eric Palatnik, P.C., for Moises A. Villa Delgado, owner.

SUBJECT – Application October 31, 2011 – Extension of the term of an approved variance that expired on March 9, 1996 to allow for a UG 16 animal hospital, contrary to use regulations. Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 1050 Forest Avenue, between Manor Road and Raymond Place, Block 315, Lot 39, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for decision, hearing closed.

## 1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> Street, LLC c/o Madison Realty Capital, L.P., owner.

SUBJECT – Application December 15, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) to convert the fourth and sixth floors of an existing building from manufacturing lofts to residential use which expired on April 27, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 27, 2011; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, north side of West 26<sup>th</sup> Street, 350' east of 6<sup>th</sup> Avenue, Block 828, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for continued hearing.

## 286-00-BZ

APPLICANT – Law Offices of Mitchell S. Ross, for Whitewall Properties II, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application January 27, 2012 – Extension of Term of a Special Permit (§73-36) for a physical culture establishment (*New York Health and Racquet Club*) located on the first and second floors of a 20-story mixed-use building, which expired on March 27, 2011; Waiver of the Rules. C6-3A/C6-4M zoning district.

PREMISES AFFECTED – 60 West 23<sup>rd</sup> Street, northeast corner of Sixth Avenue and West 23<sup>rd</sup> Street, Block 824, Lot 11, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell S. Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for decision, hearing closed.

## 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a

# MINUTES

high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3" northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for adjourned hearing.

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## 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.  
SUBJECT – Application December 30, 2011 – Amendment to a previous variance (§72-21) which allowed for the construction of a mixed use building, contrary to floor area and open space regulations. The amendment requests changes to the interior layout which would decrease medical office space, increase the number of dwelling units from 28 to 36, and increase parking from 58 to 61 spaces. R6/C2-2 zoning district.

PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for continued hearing.

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## 148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application June 23, 2011 – Amendment to an approved special permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47) and side yard (§23-461). The amendment seeks to correct open space and floor area calculations and adds a waiver to the perimeter wall height. R3-2 zoning district.

PREMISES AFFECTED – 1559 East 29<sup>th</sup> Street, between Avenue P and Kings Highway, Block 7690, Lot 20, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 659-76-A

APPLICANT –Walter T. Gorman, P.E., for Daniel and Lauren Mirkin, owners.

SUBJECT – Application November 15, 2011 – Amendment to an approved Appeal to the Building Code to continue a UG 4 second floor occupancy in a wood frame structure which expired on November 9, 2011. C1-3 /R5B zoning district.

PREMISES AFFECTED – 253 Beach 116<sup>th</sup> Street, west side, 240' south of Newport Avenue, Block 16212, Lot 19, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Ronan.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

THE RESOLUTION –

WHEREAS, this is an application for an amendment of a previously granted appeal which legalized the occupancy of a non-profit institution within the second-floor of a wood frame building, to permit the elimination the term and removal of the limitation that the second floor be occupied by a non-profit use; and

WHEREAS, a public hearing was held on this application on February 28, 2012 after due notice by publication in *The City Record*, and then to decision on March 20, 2012; and

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

WHEREAS, the site is located on the west side of Beach 116<sup>th</sup> Street, between Newport Avenue and Rockaway Beach Boulevard, within a C1-3 (R5B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 1976 when, under BSA Cal. No. 659-76-A, the Board granted an appeal of a decision by the Department of Buildings (“DOB”), to legalize the second story occupancy of the existing wood frame building by a non-profit institution, for a term of five years; and

WHEREAS, subsequently, the grant was extended and amended by the Board on various occasions; and

WHEREAS, most recently, on January 8, 2002, the Board extended the term for a period of ten years from the expiration of the prior grant, to expire on November 9, 2011; and

WHEREAS, the applicant now requests an amendment to permit the elimination of the term, and the removal of the limitation that the second floor be occupied by a non-profit institution; and

# MINUTES

WHEREAS, the applicant states that the owner of the subject building is an optometrist who maintains his professional office (Use Group 6) at the first floor, and receives a modest supplement to his income when he is able to lease the space on the second floor; and

WHEREAS, the applicant further states that the primary use of the building, as professional offices (Use Group 6) is permitted as-of-right in the subject zoning district, and that use of the second floor will be limited to Use Group 4 uses because there would be a maximum FAR of 1.0 if a Use Group 6 tenant occupied the second floor (the FAR for the subject building is 1.35); and

WHEREAS, the applicant represents that the elimination of the term is warranted because it will mitigate the financial burden on the owner of returning to the Board periodically to continue his longstanding practice at this site; and

WHEREAS, the applicant notes that significant fire safety measures have been installed in the building, including smoke detectors, a fire alarm and signal system, and an automatic sprinkler system; and

WHEREAS, at hearing, the Board raised concerns that the current certificate of occupancy does not reflect that there is a fire alarm installed at the site; and

WHEREAS, in response, the applicant states that the new certificate of occupancy will clarify all of the fire safety measures that have been implemented on the site; and

WHEREAS, by letter dated February 7, 2012, the Fire Department states that it has no objections to this application; and

WHEREAS, the applicant submitted photographs and a signage analysis reflecting that the awning at the site has been removed and replaced with complying signage; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendments are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on November 9, 1976, so that as amended this portion of the resolution shall read: “to permit the elimination of the term of the grant and the removal of the requirement that the second floor be occupied by a non-profit institution; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 15, 2012”-(2) sheets; and *on further condition*:

THAT all fire safety measures will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by March 20, 2013;

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

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

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

plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. 401242277)

Adopted by the Board of Standards and Appeals, March 20, 2012.

## 243-09-BZY

APPLICANT – Mirza M. Rahman, for South Jamaica Property, LLC, owner.

SUBJECT – Application December 2, 2011 – Extension of Time (§11-332) to complete construction of a minor development and obtain a Certificate of Occupancy commenced under the prior R6 Zoning district. R4-1 Zoning district.

PREMISES AFFECTED – 87-12 175<sup>th</sup> Street, corner of 175<sup>th</sup> Street and Warwick, Block 9830, Lot 32, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES – None.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4  
Negative:.....0

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

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 28, 2012, after due notice by publication in *The City Record*, and then to decision on March 20, 2012; and

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

WHEREAS, the subject site is located on the southwest corner of 175<sup>th</sup> Street and Warwick Crescent, in an R4-1 zoning district; and

WHEREAS, the subject site has 39 feet of frontage along 175<sup>th</sup> Street, a depth of 110 feet, and a total lot area of 5,427 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use residential/community facility building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 20,394 sq. ft. (3.75 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt The Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, on April 25, 2007, New Building Permit No. 402527262-01-NB (hereinafter, the “New Building

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Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, on December 8, 2009, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy for the proposed development, pursuant to ZR § 11-332; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall 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.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the

Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the Board finds that, as discussed in the initial vesting determination on December 8, 2009, the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of December 8, 2011 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the Board notes that on December 8, 2009, when it granted the first extension of time to complete construction pursuant to ZR § 11-332, the applicant had established that the following work had been completed on the site: 30 percent of the superstructure; 20 percent of the steel work and stairs; 15 percent of the masonry; and three percent of the plumbing work; and

WHEREAS, the applicant represents that, since the time of the initial grant, it has completed: 100 percent of the superstructure; 100 percent of the steel work and stairs; 100 percent of the masonry; 100 percent of the metal joists, deck, and concrete slab; 75 percent of the framing and sheetrock; 74 percent of the doors and windows; 66 percent of the plumbing work; 61 percent of the mechanical ventilation; 44 percent of the electrical work; and 14 percent of the air conditioning units; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the New Building Permit and since the initial extension of time under ZR § 11-332; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; invoices; and photographs of the building’s interior and exterior; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit; and

WHEREAS, as to costs, the Board notes that on December 8, 2009, when it granted the first extension of

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time to complete construction pursuant to ZR § 11-332, the applicant had established that the total expenditure paid for the development was \$352,315, or 15 percent, of the \$2,336,238 cost to complete; and

WHEREAS, the applicant represents that it has spent an additional \$1,047,306 since the initial grant, and that the cost to complete the project has risen to \$2,360,104; and

WHEREAS, thus, the applicant represents that the total expenditure paid for the development is now \$1,399,621, or 59 percent of the \$2,360,104 cost to complete; and

WHEREAS, as noted, the applicant has submitted copies of cancelled checks and invoices; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the New Building Permit, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332; and

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Building Permit No. 402527262-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 20, 2014.

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## 233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61(tent), Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for decision, hearing closed.

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## 99-11-A

APPLICANT – Eric Palatnik, P.C., for Naila Aatif, owner.

SUBJECT – Application July 8, 2011 – Legalization of changes to a two-family residence which does not front upon a legally mapped street, contrary to General City Law Section 36. R6 Zoning District

PREMISES AFFECTED – 16 Brighton 7<sup>th</sup> Walk, between Brighton 7<sup>th</sup> Street and Brighton 8<sup>th</sup> Street. Block 8667, Lot 774, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for continued hearing.

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## 119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 10 A.M., for adjourned hearing.

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## 161-11-A

APPLICANT – Quinn McCabe, LLP, for Britton Property, Inc., owner.

SUBJECT – Application October 14, 2011 – Appeal seeking to vacate a Stop Work Order and rescind revocation of building permits issued for failure to obtain authorization from the adjacent property owner. R7B Zoning District.

PREMISES AFFECTED – 82-20 Britton Avenue, east side of Britton Avenue between Broadway and Layton Street, Block 1517, Lot 3, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Christopher P. McCabe.

For Opposition: Amelia Arcamone-Makinano.

For Administration: Lisa Orrantia of Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

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**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**REGULAR MEETING**  
**TUESDAY AFTERNOON, MARCH 20, 2012**  
**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Hinkson and Commissioner Montanez.  
Absent: Commissioner Ottley-Brown.

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**ZONING CALENDAR**

**108-11-BZ thru 111-11-BZ**

**CEQR #12-BSA-008R**

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

SUBJECT – Application August 8, 2011 – Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use, contrary to §32-433. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 10, 12, 14 & 16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane. Block 4065, Lots 27, 25, 24 & 21, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

**THE RESOLUTION** –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated July 8, 2011 and July 14, 2011, acting on Department of Buildings Application Nos. 520047075, 520047084, 520047066, and 520047057, read in pertinent part:

All uses on the ground floor located in a C1-1 within R3-1 district is limited to non-residential uses as per section 32-433 of the NYC Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C1-1 (R3-1) zoning district, the construction of four semi-detached two-story single-family homes (Use Group 2) which do not conform to the district use requirement that the ground floors be limited to non-residential uses, contrary to ZR § 32-433; and

WHEREAS, a public hearing was held on this application on January 31, 2012 after due notice by publication in *The City Record*, with a continued hearing on February 28, 2012, and then to decision on March 20, 2012; and

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

WHEREAS, Community Board 2, Staten Island,

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recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Hett Avenue, between New Dorp Lane and Beacon Place, within a C1-1 (R3-1) zoning district; and

WHEREAS, the site consists of four tax lots, each with 25 feet of frontage on Hett Avenue, a depth of 100 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct four semi-detached, two-story, single-family homes, each with a floor area of 1,500 sq. ft. (0.60 FAR) and two off-street parking spaces; and

WHEREAS, because residential use is not permitted on the ground floor in the subject C1-1 (R3-1) zoning district, the applicant seeks a use variance to permit the proposed ground floor residential use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site in full compliance with zoning regulations: (1) the absence of a storm sewer connection; (2) the high water table; and (3) the location on a narrow, one-way street that terminates 100 feet from the site; and

WHEREAS, as to the lack of a storm sewer connection, the applicant states that commercial development would require a storm sewer extension which would not be necessary for residential development; and

WHEREAS, the applicant submitted a letter from an engineering consultant stating that the Department of Environmental Protection ("DEP") would require the extension of the existing 15-inch storm sewer located at the corner of Hett Avenue and New Dorp Lane for a mixed-use development on the site because the storm sewer is within 200 feet from the subject property and the development would have commercial occupancies; and

WHEREAS, the letter from the engineering consultant further states that the extension of the storm sewer would require the installation of approximately 180 linear feet of private sewer in the city street to front the property, which would add approximately \$180,000 to development costs; and

WHEREAS, as to the high water table, the applicant submitted boring tests that reflect a ground water table at a depth of only seven to eight feet; and

WHEREAS, the applicant states that the high water table makes it more difficult to construct and maintain dry cellars; and

WHEREAS, the applicant further states that the potential absence of cellars adversely affects the commercial development due to the lack of storage space that could be provided, and because raising the ground floor to allow for construction of a cellar or basement for a non-residential use would necessitate the installation of ADA accessible ramps, significantly increasing the cost of construction, and would increase the height of the overall building, limiting the residential occupancy on the upper floors; and

WHEREAS, the applicant notes that raising the ground floor to allow for construction of a cellar would actually be beneficial for residential development, as it accommodates a

driveway and garage without a steep change in grade, and allows for windows at the cellar level; and

WHEREAS, as to the site's location, the applicant states that Hett Avenue is a 50-ft. wide, one-way street which terminates 100 feet north of the subject site at New Dorp Lane; and

WHEREAS, the applicant represents that the low volume of traffic and residential character on the mid-block inhibits the commercial use of the site; and

WHEREAS, the applicant further states that Hylan Boulevard, a major commercial arterial, is located only a few blocks to the west of the site, which contributes to the lack of demand for commercial use at this mid-block, residential location; and

WHEREAS, the applicant notes that the City Council approved modifications to the Lower Density Growth Management regulations in January 2011, to allow first floor residential enlargements to existing residential buildings and first floor residential use located on the "side street" frontage of corner lots that include commercial frontage on a primary commercial street (such residential use being permitted a minimum of 30 feet from the corner); and

WHEREAS, the applicant represents that these modifications reflect an acknowledgement of the difficulty of providing first floor commercial uses on properties located on side streets that are distant from primary commercial streets, and creates an unusual situation in which a completely residential section could be constructed immediately adjacent to the north of the site on the lot which fronts on both New Dorp Lane and Hett Avenue, provided it was located more than 30 feet from the intersection; and

WHEREAS, the applicant notes that the subject site is located in a small C1-1 commercial overlay that extends 200 feet from New Dorp Lane over the course of two-and-one-half blocks, and there are only four commercial uses within the commercial overlay (all fronting on New Dorp Lane), while all of the interior lots within the commercial overlay are occupied solely by residential uses; and

WHEREAS, the applicant represents that the majority of commercial overlays in the vicinity of the site have a depth of only 100 feet, and if the subject C1-1 commercial overlay had a depth of 100 feet instead of 200 feet, the proposed ground floor residential use would be permitted as-of-right; and

WHEREAS, the applicant states that the only other commercial overlays in the surrounding area with a depth of 200 feet are predominantly mapped over tax lots that exceed 100 feet in depth, and appear to have been purposely mapped to reflect the existing commercial lots and development, while the subject commercial overlay does not contain a lot with a depth greater than 103 feet, and therefore the extension of the commercial overlay 200 feet from New Dorp Lane was unnecessary; and

WHEREAS, the applicant submitted a letter from a real estate broker describing the failed efforts to market the property for mixed-use development for several months, despite the fact that there were complete plans ready for filing with the Department of Buildings for four mixed-use buildings with ground floor commercial use; and



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WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right mixed-use development consisting of four attached three-story mixed-use buildings with ground floor commercial use and residential use above; (2) an alternative as-of-right mixed-use development consisting of four attached, three-story mixed-use buildings with ground floor medical use space and residential use above; and (3) the proposed development consisting of four semi-detached two-story single-family homes; and

WHEREAS, the study concluded that neither of the as-of-right scenarios would result in a reasonable return, but that the proposed building would realize a reasonable return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is characterized predominantly by one- to three-story residential buildings; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area contains exclusively residential uses with the exception of four sites which contain commercial uses within mixed-use buildings fronting on New Dorp Lane, which is the primary east/west thoroughfare in the neighborhood; and

WHEREAS, the applicant states that the proposed buildings comply with all bulk requirements within the C1-1 (R3-1) zoning district, and that the only non-conformance relates to the residential use of the first floor; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement (EAS) CEQR No. 12BSA008R, dated August 8, 2011; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within a C1-1 (R3-1) zoning district, the proposed construction of four semi-detached two-story single-family homes (Use Group 2) which do not conform to the district use requirement that the ground floors be limited to non-residential uses, contrary to ZR § 32-433; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 22, 2011"- ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters for each of the four proposed semi-detached buildings: a total floor area of 1,500 sq. ft. (0.60 FAR); a wall height of 26'-0"; a total height of 35'-0"; and two off-street parking spaces, as indicated on the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## 158-11-BZ

### CEQR #12-BSA-030K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76’ south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES – None.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 26, 2011, acting on Department of Buildings Application No. 320243544, reads in pertinent part:

Proposed physical culture establishment in a C4-4A zoning district is contrary to Section 32-10 ZR and requires a special permit from the BSA (73-36 ZR); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4A zoning district, the operation of a physical culture establishment (PCE) at a portion of the first floor and the entire second and third floor of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2012, and then to decision on March 20, 2012; and

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

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

WHEREAS, the subject site is an irregular-shaped through lot bounded by Hillel Place to the north, Nostrand Avenue to the east, and Campus Road to the south, within a C4-4A zoning district; and

WHEREAS, the site has 31.2 feet of frontage on Hillel Place, 120 feet of frontage on Nostrand Avenue, 55.1 feet of frontage on Campus Road, and a total lot area of 12,234 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story commercial building on the site, with the proposed PCE occupying 15,981 sq. ft. of floor area on a portion of the

first floor and the entire second and third floors; and

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

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

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA030K, dated October 10, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes

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each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4A zoning district, the operation of a physical culture establishment at a portion of the first floor and the entire second and third floors of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 10, 2011” - (4) sheets and “Received November 29, 2011” - (1) sheet, and *on further condition*:

THAT the term of this grant will expire on March 20, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

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

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

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

THAT substantial construction will be completed in accordance with ZR §73-70;

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## 177-11-BZ

### CEQR #12-BSA-041X

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for St Anns ABH Owner LLC, owners.

SUBJECT – Application November 16, 2011 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within portions of an existing building. C2-3(R7X) zoning district.

PREMISES AFFECTED – 601 East 156<sup>th</sup> Street, aka 800 St. Ann’s Avenue, north east corner of East 156<sup>th</sup> Street and St. Ann’s Avenue, Block 2618, Lot 7501, Borough of Bronx.

### COMMUNITY BOARD #IBX

APPEARANCES – None.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

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

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 14, 2011, acting on Department of Buildings Application No. 220147801, reads in pertinent part:

Proposed physical culture establishment in a C2-3 (R7X) zoning district is contrary to ZR 32-10, and requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-3 (R7X) zoning district, the operation of a physical culture establishment (PCE) at a portion of the cellar and first floor of an 11-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 6, 2012, and then to decision on March 20, 2012; and

WHEREAS, Community Board 1, Bronx, waived the hearing for this application; and

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

WHEREAS, the subject site consists of several tax lots combined into a single zoning lot bounded by East 159<sup>th</sup> Street to the north, Eagle Avenue to the east, East 156<sup>th</sup> Street to the south, and St. Ann’s Avenue to the west; and

WHEREAS, the applicant states that the subject site was rezoned in 2008 from M1-1 to C2-3 (R7X) to permit development of St. Ann’s Terrace, a multi-building, mixed-use, New York Housing Partnership development, which includes 641 mixed-income rental units, 50,000 sq. ft. of commercial space, and underground parking for up to 459 spaces; and

WHEREAS, the applicant further states that the proposed PCE will be located within a portion of the building known as 601 East 156<sup>th</sup> Street, an 11-story mixed-use commercial/ residential building; and

WHEREAS, the proposed PCE will occupy 13,645 sq. ft. of floor area at the first floor, with an additional 2,722 sq. ft. of floor space located in the cellar; and

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

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

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board directed the applicant to clarify the sound attenuation measures proposed for the PCE and to confirm that the use will not adversely

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# MINUTES

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affect the residential apartments located above the PCE space; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the noise abatement measures that will be provided at the cellar and first floor to ensure that the maximum interior noise level of 45 dBA in the residential portions of the building is not exceeded will include, but will not be limited to: (1) background music in general workout areas will be from low volume speakers mounted to mitigate sound vibration; (2) thick rubber floor tiles will be located in all workout areas to absorb any impact noise from the equipment being dropped; and (3) all mechanical equipment will be located in insulated rooms; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA041X, dated November 14, 2011; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance

with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-3 (R7X) zoning district, the operation of a physical culture establishment at a portion of the cellar and first floor of an 11-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 2, 2012" - (4) sheets, and *on further condition*:

THAT the term of this grant will expire on March 20, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

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

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

THAT sound attenuation measures will be provided as indicated on the BSA-approved plans;

THAT substantial construction will be completed in accordance with ZR §73-70;

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

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

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

Adopted by the Board of Standards and Appeals, March 20, 2012.

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## 31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for deferred decision.

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## 102-11-BZ

APPLICANT – H. Irving Sigman, for S & I Property Management, LLC, owner.

SUBJECT – Application July 20, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Spa*). M1-1 (CP) zoning district.

PREMISES AFFECTED – 131-23 31<sup>st</sup> Avenue, northwest corner of the intersection of 31<sup>st</sup> Avenue & Whitestone Expressway (West Service Road). Block 4361, Lot 27. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel, Barney Sigman and James Heineman.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for continued hearing.

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## 142-11-BZ

APPLICANT – Goldman Harris LLC, for The Phillippe at W75st NY, LLC, owner.

SUBJECT – Application September 9, 2011 – Variance (§72-21) to allow a new residential building, contrary to height and setback (§23-692), rear setback (§23-633), and lot coverage (§23-145) regulations. C4-6A zoning district.

PREMISES AFFECTED – 207 West 75<sup>th</sup> Street, north side of West 75<sup>th</sup> Street, between Broadway and Amsterdam Avenue, Block 1167, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #7M

For Applicant: Caroline Harris.

For Opposition: Mark Diller of CB 7 and Steven Basshov.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 1:30 P.M., for continued hearing.

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## 176-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Lubimor, owner.

SUBJECT – Application November 14, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for continued hearing.

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## 182-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 775 Broadway Acquisition LLC c/o The Jackson Group LLC, owner; 777 Broadway Fitness Group, lessee.

SUBJECT – Application December 5, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-3 zoning district.

PREMISES AFFECTED – 777 Broadway, located on the east corner of the intersection formed by Broadway and Summer Place. Block 3131, Lot 6. Borough of Brooklyn.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Lobel and Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

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

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for decision, hearing closed.

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## 197-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 329 Wyckoff Realty, LLC, owner; Wyckoff Fitness Group, LLC, lessee.

SUBJECT – Application December 30, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on a portion of the first and second floors of an existing two-story building. C4-3 zoning districts.

PREMISES AFFECTED – 329 Wyckoff Avenue, northeast corner of the intersection formed by Wyckoff and Myrtle Avenues and Palmetto Street, Block 3444, Lot 33, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Richard Lobel and Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

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Negative:.....0  
Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to April 3, 2012, at 1:30 P.M., for decision, hearing closed.  
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### 3-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Michael Weissman, owner.

SUBJECT – Application January 4, 2012 – Special Permit (§73-622) for the enlargement an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(b)) requirements. R4 zoning district.

PREMISES AFFECTED – 1913 East 28<sup>th</sup> Street, east side of East 28<sup>th</sup> Street, 100' south of Avenue S. Block 7307, Lot 88. Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

### \*CORRECTION

This resolution adopted on February 14, 2012, under Calendar No. 248-75-BZ and printed in Volume 97, Bulletin No. 8, is hereby corrected to read as follows:

### 248-75-BZ

APPLICANT – Alfonso Duarte, P.E., for 444 East 86<sup>th</sup> Street Owners Corp., owner; Quick Park, lessee.

SUBJECT – Application August 8, 2011 – Extension of Term permitting the use of a maximum of 50 transient parking spaces within an accessory garage granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law, which expired on October 14, 2010; Waiver of the Rules. R8B, R10 and C1-5 zoning districts.

PREMISES AFFECTED – 1621 York Avenue, aka 436 East 86<sup>th</sup> Street, west side of York Avenue, Block 1565, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a transient parking garage, which expired on October 14, 2010; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on January 24, 2012, and then to decision on February 14, 2012; and

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

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

WHEREAS, the subject premises is an irregular-shaped lot with approximately 143 feet of frontage on the south side of East 86<sup>th</sup> Street and 50 feet of frontage on the west side of York Avenue, partially within an R10 zoning district, partially within an R10A zoning district, and partially within a C1-5 (R10A) zoning district; and

WHEREAS, the site is occupied by a 37-story residential building; and

WHEREAS, the cellar and a portion of the first floor are occupied by a 126-space accessory parking garage; and

WHEREAS, on October 14, 1975, under the subject calendar number, the Board granted a variance pursuant to

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Section 60(3) of the Multiple Dwelling Law to permit a maximum of 50 surplus parking spaces on the first floor to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 12, 2000, the Board granted a ten-year extension of term, which expired on October 14, 2010; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, at hearing, the Board directed the applicant to clarify the signage and hours of operation of the site; and

WHEREAS, in response, the applicant submitted a revised plan and signage analysis reflecting that the signage complies with C1 district signage regulations except that the illuminated sign projects six inches beyond the maximum permitted projection across the street line; and

WHEREAS, the applicant states that the illuminated sign is the only sign that is visible to motorists travelling in either direction along York Avenue, since the garage entrance is otherwise hidden from motorists' view; and

WHEREAS, the applicant states that the hours of operation for the garage are as follows: Monday through Wednesday, from 6:00 a.m. to 12:00 a.m.; Thursday and Friday, from 6:00 a.m. to 2:00 a.m.; and Saturday and Sunday, from 7:00 a.m. to 2:00 a.m.; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on October 14, 1975, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from October 14, 2010, to expire on October 14, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received 'August 8, 2011'-(2) sheets and Received 'January 10, 2012'-(1) sheet; and *on further condition*:

THAT this term will expire on October 14, 2020;

THAT all residential leases must indicate that the 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 must be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT all signage will be in accordance with the BSA-approved plans;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of occupancy;

THAT the layout of the parking lot will be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 102824650)

Adopted by the Board of Standards and Appeals, February 14, 2012.

**\*The resolution has been revised to add Approved Plans dated 'Received January 10, 2012'. Corrected in Bulletin Nos. 12-13, Vol. 97, dated March 29, 2012.**

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## \*CORRECTION

This resolution adopted on March 6, 2012, under Calendar No. 548-79-BZ and printed in Volume 97, Bulletin No. 11, is hereby corrected to read as follows:

### 548-79-BZ

APPLICANT – Bryan Cave LLP, for 249 West 29 Owners Corp.

SUBJECT – Application December 2, 2011 – Amendment of a previously approved variance (§72-21) which permitted residential use (UG2) on floors 3 through 15. Application seeks to legalize residential use on the 2nd floor, contrary to use regulations §42-481. M1-6D zoning district.

PREMISES AFFECTED – 247-251 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street, 170' east of 8<sup>th</sup> Avenue, Block 779, Lot 10, 12, Borough of Manhattan.

### COMMUNITY BOARD #5M

#### APPEARANCES –

For Applicant: Margery Perlmutter.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted the conversion of all floors above the second floor of a 15-story commercial and manufacturing building to residential use, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, and then to decision on March 6, 2012; and

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

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

WHEREAS, the subject site is located on the north side of West 29<sup>th</sup> Street between Seventh Avenue and Eighth Avenue, within an M1-6D zoning district; and

WHEREAS, the applicant notes that the site was formerly located within an M1-5 zoning district, but on September 21, 2011, the City Council rezoned the site to M1-6D; and

WHEREAS, the site has 75 feet of frontage on West 29<sup>th</sup> Street, a depth of 100 feet, and a lot area of 7,500 sq. ft.; and

WHEREAS, the site is occupied by a 50-ft. wide 15-story building at 249 West 29<sup>th</sup> Street (the “249 Building”) and an adjoining 25-ft. wide, two-story building at 247 West 29<sup>th</sup> Street (the “247 Building”) (together, the “Building”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 15, 1980 when, under the subject

calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the conversion of all floors above the second floor of the commercial and manufacturing building to residential use, contrary to ZR § 42-00; and

WHEREAS, subsequently, the grant was amended on several occasions to permit changes in the number of dwelling units on certain floors, changes to the interior layout of the Building, and the addition of a greenhouse on the exterior balcony of the tenth floor; and

WHEREAS, the applicant now seeks to amend the grant to permit the further conversion of the three commercial units on the second floor to residential use; and

WHEREAS, the applicant states that the original variance requested conversion of the second floor of the Building, which at the time was occupied by an active conforming use, to residential as well, however the Board excluded the second floor from the variance approval; and

WHEREAS, the applicant states that in the years since the variance was granted, the owners of the three units on the second floor have had difficulty finding long-term replacement tenants, and all of the commercial spaces on the second floor are now occupied as live-work spaces; and

WHEREAS, the applicant represents that converting the second floor to residential use is necessary to provide a reasonable return because the owners are unlikely to find commercial tenants for the second floor units for the following reasons: (1) the floor plates and size of the units at the second floor are too small to be attractive to many manufacturing or commercial uses; (2) the layout of the second floor imposes hardships on the suitability and marketability of that floor for conforming uses; and (3) there is only one lobby and elevator for both the residential and commercial tenants, which creates access, egress, and security issues; and

WHEREAS, as to the physical structure of the Building, the applicant states that the Building has small floor plates with units containing less than 2,100 sq. ft. each, and are too small to accommodate the types of commercial and manufacturing uses that operate in the surrounding area; and

WHEREAS, the Board notes that the unique building conditions, which support the findings for the original variance for the third through 15<sup>th</sup> floors, namely that those floors were not viable for a conforming use due to the building’s inadequate floor plates, there was a lack of interest in such spaces for commercial use, and the decline of the manufacturing sector in the area that led to extensive vacancies, also apply to the second floor; and

WHEREAS, as to the layout of the second floor, the applicant notes that the second floor of the 249 Building is 50 feet wide and approximately 88 feet deep (4,400 sq. ft.), and is occupied by two of the second floor units, while the second floor of the 247 Building is 25 feet wide and approximately 88 feet deep (2,210 sq. ft.), and is occupied by one of the second floor units; and

WHEREAS, the applicant states that for structural reasons there is a four-ft. wide penetration through the party wall that connects the 249 Building and the 247 Building, which separates the first and second floors of the Building into two parts; and



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WHEREAS, the applicant further states that the opening in the party wall to allow access between the 247 Building and the 249 Building is limited by structural considerations, so it is not possible to treat the two portions as a single contiguous 6,610 sq. ft. space, which would be more marketable for conforming uses; and

WHEREAS, the applicant states that the elevator and stair cores, which occupy approximately 1,120 sq. ft., are located in the 249 Building and are the only means of access to the unit in the 247 Building; and

WHEREAS, the applicant represents that installing separate stairs and an elevator in the 247 Building solely to access one unit would be cost prohibitive and would significantly reduce the size of the retail space on the first floor, further reducing the Building's revenue; and

WHEREAS, as to the access issues, the applicant states that there is only one passenger elevator, while the freight elevator is manually operated and there is no full-time elevator operator on staff because it is cost prohibitive; and

WHEREAS, the applicant states that because visitors and employees of the commercial tenants at the second floor cannot use the manual freight elevator and there is no full-time elevator operator, commercial and residential tenants must share a common lobby and elevator, which results in an inappropriate mixing of public and private occupancies that poses a significant security risk to residential tenants; and

WHEREAS, the applicant represents that modification of the existing service corridor to provide separate, 36-inch wide clear access into the building by commercial tenants and their guests would require redirecting service risers and flues, repurposing a portion of the existing disused elevator shaft into a lobby area in order to be ADA-accessible, and converting the existing freight elevator from manual to automatic which would cost in excess of \$415,000; and

WHEREAS, as noted above, the subject site was rezoned from an M1-5 zoning district to an M1-6D zoning district on September 21, 2011; and

WHEREAS, the applicant states that in M1-6D zoning districts, ZR § 42-481 permits residential use in existing buildings where the building to be converted contains less than 40,000 sq. ft. of floor area; and

WHEREAS, however, the applicant notes that the Building contains approximately 62,500 sq. ft. of floor area and therefore is not eligible for as-of-right residential conversion pursuant to ZR § 42-481; and

WHEREAS, the applicant represents that the recent rezoning of the site to M1-6D reflects that residential uses are consistent with the surrounding neighborhood, which is characterized by a mix of manufacturing, commercial and residential uses; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 15, 1980, so that as amended this portion of the resolution shall

read: "to permit the noted modification to the plans to reflect the conversion of the second floor to residential use, contrary to ZR § 42-481; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received December 2, 2011'-(3) sheets; and *on further condition*:

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 120883491)

Adopted by the Board of Standards and Appeals, March 6, 2012.

**\*The resolution has been revised to correct Approved Plans which read: 'Received December 2, 2011'-(4) sheets now reads: 'Received December 2, 2011'-(3) sheets. Corrected in Bulletin Nos. 12-13, Vol. 97, dated March 29, 2012.**

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# BULLETIN

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

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Volume 97, No. 14

April 4, 2012

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

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<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
<b>HEARINGS HELD -</b>	<b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>
<b>BSA WEBPAGE @</b>	<b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b>

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Tuesday, March 27, 2012**

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160-11-BZ	1677 Bruckner Boulevard, Bronx
183-11-BZ	1133 York Avenue, Manhattan
193-11-BZ	215 Exeter Street, Brooklyn

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# DOCKET

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New Case Filed Up to March 27, 2012  
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**67-12-BZ**

1442 First Avenue, southeast corner of the intersection formed by 1st Avenue and East 75th Street., Block 1469, Lot(s) 46, Borough of **Manhattan, Community Board: 08**. Proposed extension of eating and drinking establishment in Use Group 6 on the first floor to the second floor, and construction of a convenience stair between the first and second floors. C1-9 district.

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**68-12-BZ**

89-15 Rockaway Boulevard, north west corner of the intersection of Rockaway Boulevard and 90th Street., Block 9093, Lot(s) 13, Borough of **Queens, Community Board: 09**. Application is the re-establishment of a variance and time to get a new Certificate of Occupancy for a gasoline service station and repair facility which has been in continuous operation at this location for over fifty (50) years. R5 district.

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**69-12-BZ**

1 Maspeth Avenue, east side of Humboldt Street, between Maspeth Avenue and Conselyea Street, Block 2892, Lot(s) 1, Borough of **Brooklyn, Community Board: 01**. Variance application pursuant to ZR Section 72-21 to permit the proposed five story mixed use development, including cellar and first floor ambulatory diagnostic health care treatment facility use (Use Group 4), use group 6 local retail at the remainder of the first floor and use group 2 residential use at floors 2-5 is contrary to ZR Section 32-00 which does not permit the proposed residential usage in the underlying C8-2 zoning district. C8-2 district.

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**70-12-BZ**

78 Franklin Street, between Broadway and Church Street., Block 175, Lot(s) 4, Borough of **Manhattan, Community Board: 1**. Application for a PCE on a portion of the first, cellar and sub-cellar floors. C6-2A district.

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**71-12-BZ**

165-10 Archer Avenue, southeast corner of 165th Street and Archer Avenue, Block 10155, Lot(s) 105, Borough of **Queens, Community Board: 12**. Variance from requirements of the Zoning Resolution pertaining to height and setback, accessory off street parking, and floor area ratio. The requested variance will permit the construction of a 14 story building containing 89 residential work force housing units and commercial use within a C6-2 zoning district within the Downtown Jamaica Special District. C6-2 district.

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

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# CALENDAR

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**APRIL 24, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 24, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**196-49-BZ**

APPLICANT – Walter T. Gorman, P.E., for 1280 Allerton Avenue Realty Corp., owner; Don-Glo Auto Service Center, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a gasoline service station (Sunoco) which expired on September 30, 2005; an Amendment for the addition of another lift in the service building and the addition of an air tower and car vacuum tower at the northwest corner of the site. R4 zoning district.

PREMISES AFFECTED – 1280 Allerton Avenue, south west corner of Wilson Avenue. Block 4468, Lot 43. Borough of Bronx.

**COMMUNITY BOARD #2M**  
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**290-06-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application February 2, 2012 – Amendment to prior approval allowing a six-story residential and commercial building pursuant to BSA Cal. No. 290-06-BZ.

PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**248-08-BZ**

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

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

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

**COMMUNITY BOARD #12BX**  
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**APPEALS CALENDAR**

**154-11-A**

APPLICANT – Eric Palatnik, for Atlantic Outdoor Advertising, Inc., owner.

SUBJECT – Application October 3, 2011 – This appeal seeks reversal of a Department of Buildings determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9/R9 zoning district.

PREMISES AFFECTED – 23-10 Queens Plaza South, between 23<sup>rd</sup> Street and 24<sup>th</sup> Street, Block 425, Lot 5, Borough of Queens.

**COMMUNITY BOARD #2Q**  
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**180-11-A & 181-11-A**

APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.

SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 Zoning district.

PREMISES AFFECTED – 34-57 & 34-59 107<sup>th</sup> Street, between 34<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.

**COMMUNITY BOARD #3Q**  
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**APRIL 24, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 24, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**174-11-BZ**

APPLICANT – Daniel H. Braff, Esq., for The Church of Jesus Christ of Latter-day Saints, owner.

SUBJECT – Application November 9, 2011 – Variance (§72-21) to permit in an R2A zoning district the development of a new two-story chapel (*The Church of Jesus Christ of Latter-day Saints*), contrary to floor area ratio (§24-111) and contrary to permitted obstructions in the side yards and rear yard (§24-33).

PREMISES AFFECTED – 145-15 33<sup>rd</sup> Avenue, north side of 33<sup>rd</sup> Avenue approximately 400' east of Parsons Boulevard, Block 4789, Lot 81, Borough of Queens.

**COMMUNITY BOARD #7Q**  
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# CALENDAR

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**7-12-BZ**

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow the proposed physical culture establishment ("PCE") (Revolutions 55) in a C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #4BK**

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**26-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Elmnic, LLC, owner.

SUBJECT – Application February 3, 2012 – Special Permit ZR §73-52 to allow for a commercial district boundary to be extended into a residential zone to allow for accessory commercial parking. C1-2/R6B & R4-1 zoning districts.

PREMISES AFFECTED – 73-49 Grand Avenue, northwest corner of the intersection formed by Grand Avenue and 74<sup>th</sup> Street, Block 2491, Lot 40, Borough of Queens.

**COMMUNITY BOARD #5Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 27, 2012 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 118-53-BZ

APPLICANT – Issa Khorasanchi, for Henry R. Jenet,  
owner.

SUBJECT – Application October 24, 2011 – Extension of  
Term (§11-411) for continued operation of UG6 retail stores  
which expired on December 7, 2011. R4 zoning district.

PREMISES AFFECTED – 106-57/61 160<sup>th</sup> Street, east side  
of 160<sup>th</sup> Street, 25' north of intersection of 107<sup>th</sup> Avenue and  
160<sup>th</sup> Street, Block 10128, Lot 50, Borough of Queens.

#### COMMUNITY BOARD #12Q

#### APPEARANCES –

For Applicant: Issa Khorasanchi.

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and  
an extension of the term for a previously granted variance  
for the operation of Use Group 6 retail stores; and

WHEREAS, a public hearing was held on this  
application on January 10, 2012, after due notice by  
publication in *The City Record*, with a continued hearing on  
February 28, 2012, and then to decision on March 27, 2012;  
and

WHEREAS, Community Board 12, Queens,  
recommends approval of this application; and

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

WHEREAS, the subject site is located on the east side of  
160<sup>th</sup> Street, between 107<sup>th</sup> Avenue and South Road, within an  
R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the site since June 19, 1953 when, under the subject calendar  
number, the Board granted a variance to permit the  
construction and maintenance of a building occupied by retail  
stores (Use Group 6) with a loading and unloading area and a  
curb cut at the rear of the building, within a residence use  
district, for a term of 20 years; and

WHEREAS, subsequently, the grant was amended and  
the term extended at various times; and

WHEREAS, most recently, on August 6, 2002, the Board  
granted a ten-year extension of term, which expired on  
December 7, 2011; and

WHEREAS, the applicant now seeks an additional ten-  
year extension of the term; and

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

WHEREAS, at hearing, the Board directed the applicant  
to repair the damaged fence at the rear of the site, to clarify  
whether the advertisements in the windows of the building are  
permitted and whether the parking in the rear of the site  
obstructs loading and unloading operations, and to confirm that  
the site is in compliance with the condition from the prior grant  
that a sign be posted at the rear of the building regarding Fire  
Department access; and

WHEREAS, in response, the applicant submitted  
photographs reflecting that the fence at the rear of the site has  
been repaired and the advertisements have been removed from  
the windows, and submitted an affidavit from the owner stating  
that the parking area in the rear of the building is only used for  
the parking of four cars on a daily basis; and

WHEREAS, the applicant also submitted a photograph  
reflecting that a sign is posted at the rear of the building  
alerting the Fire Department that the building is accessed  
through two steel plate doors approximately ten feet apart, in  
compliance with the conditions from the previous grant; and

WHEREAS, based upon the above, the Board finds  
that the requested extension of term is appropriate with  
certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and  
Appeals *reopens* and *amends* the resolution, dated June 19,  
1953, so that as amended this portion of the resolution shall  
read: “to extend the term for ten years from December 7,  
2011, to expire on December 7, 2021; *on condition* that all  
use and operations shall substantially conform to plans filed  
with this application marked ‘Received November 28,  
2011’-(1) sheet and ‘March 26, 2012’-(1) sheet; and *on  
further condition*:

THAT the term of the grant will expire on December 7,  
2021;

THAT parking at the rear of the site be limited to a  
maximum of four cars;

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

THAT the above conditions will appear on the certificate  
of occupancy;

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

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(DOB App. No. 420375347)

Adopted by the Board of Standards and Appeals March  
27, 2012.

# MINUTES

## 389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore and George Fiore.

SUBJECT – Application February 22, 2012 – Extension of Time to obtain a Certificate of Occupancy of previously granted variance for the operation of a UG8 parking lot which expired on May 11, 2011; waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 to 31-12 45<sup>th</sup> Street, southwest corner of 45<sup>th</sup> Street and 31<sup>st</sup> Avenue, Block 710, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for decision, hearing closed.

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## 636-70-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Kings 108 Car Care, Inc. (Mobile S/S), lessee.

SUBJECT – Application January 24, 2012 – Amendment to an approved Special Permit (§73-211) for the operation of an automotive service station (UG 16B) with accessory uses. C2-2/R6 zoning district.

PREMISES AFFECTED – 105-45 to 105-55 Horace Harding Expressway, northwest corner 108<sup>th</sup> Street, Block 1694, Lot 23. Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for decision, hearing closed.

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## 172-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Clearview Mortgage Bank Corporation, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of an approved Variance (§72-21) which permitted the construction of a two-story UG6 professional office building which expires on March 31, 2012. R2 zoning district.

PREMISES AFFECTED – 256-10 Union Turnpike, south side of Union Turnpike between 256<sup>th</sup> and 257<sup>th</sup> Streets, Block 8693, Lot 14, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for decision, hearing closed.

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## 162-95-BZ & 163-95-BZ

APPLICANT – Sheldon Lobel, P.C., for Salvatore Bonavita, owner; Pelham Bay Fitness Group, LLC, lessee.

SUBJECT – Application April 3, 2011 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on July 30, 2006; Amendment to increase the floor area of the establishment. Waiver of the rules. C2-4/R6 and R7-1 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, Southern side of Westchester Avenue between Mahan Avenue and Hobart Avenue. Block 4196, Lots 9, 11 & 13, Borough of Bronx.

### COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Kenneth Kearns of Community Board 10.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for decision, hearing closed.

-----

## 21-01-BZ

APPLICANT – Troutman Sanders, LLP, for Mattone Group Jamaica Co., LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application January 23, 2012 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Bally Total Fitness*) which expired on May 22, 2011. C6-3 (DJ) zoning district.

PREMISES AFFECTED – 159-02 Jamaica Avenue, 160<sup>th</sup> Street, Block 10100, Lot 1, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Jeremiah H. Candrea.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 77-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Jack Ancona, owner.

SUBJECT – Application February 21, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the construction of a 12-story mixed use building, containing residential (UG2) and retail uses (UG6) which expired on February 28, 2010; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 132 West 26<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 801, Lot 60, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jerry Johnson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for decision, hearing closed.

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## 187-10-BZ

APPLICANT – NYC Board of Standards and Appeals

OWNER – Ranjit S. Atwal

SUBJECT – Application October 5, 2010 – Dismissal for lack of Prosecution – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard regulations (§23-462(c)). R6B zoning district.

PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Khalid M. Azam.

**ACTION OF THE BOARD** – Withdrawn from Dismissal Calendar and laid over to May 1, 2012, at 1:30 P.M., for BZ public hearing.

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## APPEALS CALENDAR

### 15-11-A

APPLICANT – Slater & Beckerman, LLP, for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building's determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Neil Weisbard.

**ACTION OF THE BOARD** – Appeal granted

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Manhattan Borough Commissioner of the Department of Buildings (“DOB”) on January 12, 2011 (the “Final Determination”), brought by the property owner (the “Appellant”); and

WHEREAS, the Final Determination states, in pertinent part:

Request to legalize non-conforming flex faced advertising sign is denied. The evidence submitted as outlined in the attached request letter does not support the legal existence of the proposed advertising sign use when such signs became prohibited with the change of the zoning district to C6; and

WHEREAS, a public hearing was held on this appeal on August 23, 2011 after due notice by publication in *The City Record*, with a continued hearing on February 14, 2012, and then to decision on March 27, 2012; and

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

WHEREAS, the subject site is located on a lot bounded by Sixth Avenue to the west, West 30<sup>th</sup> Street to the south, and Broadway to the east, within a C6-4X zoning district; and

WHEREAS, the site is occupied by three buildings, including a 16-story building fronting on both Broadway and Sixth Avenue (the “Building”) with four non-illuminated advertising signs, including one located on the western portion of the south wall (the “Sign”), which is the subject of this appeal; and

WHEREAS, the Sign consists of a replaceable non-illuminated fabric wall sign hanging from a sign structure made up of two approximately two-inch wide galvanized steel angle irons (the “Sign Structure”), with an area of approximately 2,660 sq. ft. and; the Sign is hung from the Sign Structure using “J” hooks and thin steel cables; and

WHEREAS, prior to October 25, 1995, the site was located entirely within an M1-6 zoning district, in which the Sign would be permitted as-of-right; and

WHEREAS, however, the site was rezoned from an M1-6 zoning district to a C6-4X zoning district on October 25, 1995 (or the “Rezoning Date”), in which the Sign is not permitted as-of-right; and

### PROCEDURAL HISTORY

WHEREAS, on March 20, 2007, DOB performed an inspection of the site and issued several Environmental Control Board (“ECB”) violations to the operator of the Sign, including

# MINUTES

a violation for an impermissible advertising sign in a C6-4X zoning district pursuant to ZR § 32-63 and a violation for a sign on display without a permit pursuant to Administrative Code § 27-147;

WHEREAS, following the issuance of the ECB violations, a hearing was held on February 7, 2008, and on April 8, 2008 an Administrative Law Judge found the Appellant in violation (the “ECB Decision”); and

WHEREAS, the Appellant states that since the date of the ECB Decision it has been working to obtain a determination from DOB that the Sign is legally non-conforming; and

WHEREAS, specifically, following the ECB Decision, the Appellant submitted several letters to DOB seeking a determination that the Sign is permitted to remain at the site as a legal, non-conforming sign, and on June 24, 2010 submitted a Zoning Resolution Determination Form (“ZRD1”) to the Manhattan Borough Office requesting a determination that (1) the Sign was lawfully established in, or prior to, September 1961, (2) the Sign constituted a conforming use from the date of its establishment to 1995, when the zoning changed from an M1-6 to a C6-4X zoning district, and (3) that since the Sign’s use has not been discontinued for a continuous period of two or more years it is legally non-conforming and, therefore, may be maintained or altered, pursuant to the Zoning Resolution; and

WHEREAS, on August 12, 2010, the Manhattan Borough Commissioner issued a determination denying the ZRD1 request; and

WHEREAS, on November 12, 2010, the Appellant submitted a similar ZRD1 request to DOB’s Technical Affairs Unit, which resulted in DOB’s issuance of the Final Determination; and

## RELEVANT ZONING RESOLUTION PROVISIONS

### ZR § 12-10 (Definitions)

Non-conforming, or non-conformity

A “non-conforming” #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

\* \* \*

### ZR § 52-11 (Continuation of Non-Conforming Uses)

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

\* \* \*

### ZR § 52-61 (Discontinuance)

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a

conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

## THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-4X zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant must meet the Zoning Resolution’s criteria for a “non-conforming use” as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines “non-conforming” use as “any lawful use, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto”; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: “[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming use”; and

WHEREAS, accordingly, DOB asserts that as per the Zoning Resolution, the Appellant must establish that the use was lawfully established before it became unlawful, by zoning, on October 25, 1995 and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, thus, the Board notes that the standard to apply to the subject sign is (1) the sign existed lawfully as of October 25, 1995, and (2) that the use did not change or cease for a two-year period since then. See ZR §§ 12-10, 52-61; and

## APPELLANT’S POSITION

- Lawful Establishment

WHEREAS, the Appellant states that a sign has existed on the western portion of the south wall of the site since at least August 1930, originally as a painted advertising sign; and

WHEREAS, the Appellant further states that in, or prior to, September 1961, the painted sign was converted to an approximately 2,660 sq. ft. replaceable non-illuminated fabric wall sign, at which time the Sign Structure was installed to support the Sign; and

WHEREAS, the Appellant represents that at the time the Sign Structure was installed and the Sign was converted from a painted sign to a replaceable fabric sign, the Zoning Resolution allowed non-illuminated advertising wall signs at the site, with no restrictions on size or height, and the Building Code did not require a permit for the installation of the Sign and Sign Structure; and

WHEREAS, the Appellant notes that Article 2 of the 1938 Building Code, which was in effect in September 1961, regulated the use of signs and contained no provision requiring a permit for the installation of a non-illuminated wall sign; and

WHEREAS, specifically, the Appellant states that the

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only provisions which referenced the issuance of permits were those relating to ground and roof signs (Section 26-9.0 of the 1938 Building Code) and illuminated signs (Section 26-13.0 of the 1938 Building Code), which specifically stated “permits required” and “issue of permits,” respectively; however, the provision relating to “signs on walls” (Section 26-12.0 of the 1938 Building Code), which would have regulated the Sign and Sign Structure, contained no mention of permits; and

WHEREAS, the Appellant notes that DOB initially argued that a permit was required for the installation of the Sign since the 1938 Building Code; however, DOB subsequently amended its position to concede that the 1938 Building Code did not require permits for non-illuminated wall signs or sign structures, and that permits were not required for a non-illuminated wall sign the size of the Sign until the enactment of the 1968 Building Code; and

WHEREAS, in support of its assertion that the Sign and Sign Structure were lawfully established as of September 1961, the Appellant submitted (1) a September 1961 photograph of the Sign, (2) a letter from the President of Skyviews Survey Inc, a professional photographer, concluding that the September 1961 photograph shows that the Sign cast a shadow which could only result from a physical structure, and that the Sign consisted of a canvas material hung from a physical structure, rather than a painted sign; (3) an affidavit from the Vice President of Service Sign Erectors stating that the company installed advertising copy on the Sign Structure from 1961 to 2008 (the “Service Sign Erectors Affidavit”); and (4) an affidavit from the President of Allied Outdoor Advertising, stating that the company owned and controlled the Sign and Sign Structure prior to 1961, when the Seagrams advertising copy (pictured in the September 1961 photograph) was located on the Sign Structure, until 1993; and

WHEREAS, accordingly, the Appellant states that it has established that the Sign and Sign Structure were installed as of September 1961, prior to the enactment of the 1968 Building Code, when a permit first would have been required for such installation; and

WHEREAS, the Appellant submitted the following evidence in support of the existence of the Sign and Sign Structure as of the October 25, 1995 rezoning date: (1) a June 1995 aerial photograph of the Sign and accompanying letter of authentication; (2) a November 25, 2009 letter from the president of Skyviews Survey Inc., a professional photographer, in support of the June 1995 aerial photograph depicting the existence of the Sign; (3) a February 2, 1995 invoice from Service Sign Erectors (the “Service Sign Erectors Invoice”) which states “[i]nstalled Cellular One ad copy”; (4) the Service Sign Erectors Affidavit, which states that the company installed a “Cellular One” flexface vinyl sign onto the Sign Structure on February 2, 1995; and (4) an affidavit from a nearby retailer, stating that he personally witnessed the Sign on September 7, 1995; and

WHEREAS, the Appellant also submitted evidence of the continuous existence of the Sign between September 1961 and October 25, 1995, but states that because the sign was lawfully established before a permit was required in 1968, and because the Sign did not become non-conforming until October

25, 1995, the ZR § 52-61 requirement that there be no two-year discontinuance of the use of the Sign did not apply until October 25, 1995; and

WHEREAS, therefore, the Appellant concludes that the Sign and Sign Structure were lawfully established prior to the enactment of the 1968 Building Code and were in existence as of the October 25, 1995 rezoning date; and

- Continuity of the Sign

WHEREAS, the Appellant submitted photographs, leases, invoices, accounting statements, tax documents, copies of checks, certificates of liability insurance, and letters as primary evidence to establish the continuity of use of the Sign and Sign Structure since at least October 25, 1995; and

WHEREAS, the Appellant also submitted 11 affidavits from local retailers and the owner of the site, in support of the continuous use and existence of the Sign and Sign Structure, each attesting to personally witnessing the continued existence of the Sign since the Rezoning Date, with occasional changes in the subject matter being advertised (the “Affidavits”); and

WHEREAS, as noted above, in support of the existence of the Sign as of the Rezoning Date, the Appellant submitted: (1) the June 1995 aerial photograph of the Sign and accompanying letter of authentication; (2) the November 25, 2009 letter in support of the June 1995 aerial photograph depicting the existence of the Sign; (3) the Service Sign Erectors Invoice; (4) the Service Sign Erectors Affidavit; (5) an affidavit from a nearby retailer, stating that he personally witnessed the Sign on September 7, 1995, and from such date continuously until 2008 with occasional changes in the subject matter being advertised; and (6) the remaining Affidavits; and

WHEREAS, in support of the existence of the Sign in 1996, the Appellant submitted: (1) a letter dated September 9, 1996 from Continental Outdoor, Inc., (“Continental Outdoor”), then-lessee of the Sign and Sign Structure, regarding the payment of monthly rent for September 1996 and stating that “our installers will need roof access to install ad copy during the first week of October”; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1997, the Appellant submitted: (1) an August 3, 1997 aerial photograph of the Sign and an accompanying letter of authentication; (2) a lease for the Sign and Sign Structure, dated July 16, 1997, between the owner and Continental Outdoor, for a term of five years (the “1997 Lease”); (3) a copy of a check, dated September 15, 1997, for the monthly rent for the Sign and Sign Structure for September 15, 1997 to October 14, 1997; and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1998, the Appellant submitted: (1) the 1997 Lease; (2) a letter from Eller Media Company, dated May 19, 2000, stating that it had been assigned the 1997 Lease on or about June 1998; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1999, the Appellant submitted: (1) an October 1999 photograph of the Sign and an accompanying letter of authentication; (2) an invoice from the owner’s management company, indicating the payment of rents from April 1999 to October 1999; (3) the 1997 Lease; and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign in

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2000, the Appellant submitted: (1) a photograph of the Sign dated between January 1, 2000 and February 29, 2000 and an accompanying letter of authentication; (2) a photograph of the Sign dated between March 1, 2000 and April 30, 2000 and an accompanying letter of authentication; (3) a sublease for the Sign and Sign Structure dated June 23, 2000, between the owner and Eller Media Co., for a term of ten years (the "2000 Sublease"); (4) an addendum to the 1997 Lease, dated June 23, 2000; (5) copies of a check, dated June 21, 2000, for the monthly rent of the Sign and Sign Structure; (6) a letter from the owner's management company, dated June 22, 2000, acknowledging receipt of the June 21, 2000 rent check; and (7) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2001, the Appellant submitted: (1) copies of checks and accounting statements for the monthly rent of the Sign and Sign Structure; (2) a letter from Eller Media Co., the tenant in possession of the sign space, stating that it changed its name to Clear Channel Outdoor, Inc., ("Clear Channel"); (3) a certificate of liability insurance, dated March 30, 2001, for the Sign and Sign Structure; (4) a letter from Clear Channel, dated September 4, 2001, regarding the payment of monthly rent of the Sign and Sign Structure for September 2001; (5) the 2000 Sublease; and (6) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2002, the Appellant submitted: (1) a 1099 – Miscellaneous Income Statement reflecting income received for the Sign and Sign Structure; (2) a letter from Clear Channel, dated May 15, 2002, amending the terms of the 1997 Lease; (3) a letter from Clear Channel, dated November 15, 2002, regarding the payment of monthly rent of the Sign and Sign Structure for October 2002; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2003, the Appellant submitted: (1) copies of checks from Clear Channel for monthly rent of the Sign and Sign Structure; (2) accounting statements from Clear Channel, indicating monthly rent payments; (3) a certificate of liability insurance dated April 2, 2003 for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2004, the Appellant submitted: (1) copies of checks from Clear Channel for monthly rent of the Sign and Sign Structure; (2) accounting statements from Clear Channel, indicating monthly rent payments; (3) a certificate of liability insurance dated October 26, 2004 for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2005, the Appellant submitted: (1) copies of checks from Clear Channel for monthly rent of the Sign and Sign Structure; (2) accounting statements from Clear Channel, indicating monthly rent payments; (3) a 1099 – Miscellaneous Income Statement reflecting income received for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2006, the Appellant submitted: (1) accounting statements from Clear Channel, indicating monthly rent payments; (2) the 2000 Sublease; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2007, the Appellant submitted: (1) accounting statements from Clear Channel, indicating monthly rent payments; (2) ECB violations issued by DOB on March 20, 2007, relating to the use of the Sign and Sign Structure; (3) a certificate of liability insurance dated October 29, 2007 for the Sign and Sign Structure; (4) the 2000 Sublease; and (5) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2008, the Appellant submitted: (1) accounting statements from Clear Channel, indicating monthly rent payments; (2) the 2000 Sublease; and (3) the Affidavits; and

WHEREAS, as noted above, the Appellant also submitted evidence of the continuous existence of the Sign dating back to 1961, but states that because the sign was lawfully established before a permit was required in 1968, and because the Sign did not become non-conforming until the Rezoning Date, the ZR § 52-61 requirement that there be no two-year discontinuance of the use of the Sign did not apply until the October 25, 1995; and

WHEREAS, based on the above, the Appellant contends that it has established that the Sign has been continuously in existence since at least October 25, 1995; and

## THE DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, DOB asserts that (1) the Appellant failed to show that the Sign was established as a lawful, non-conforming use prior to the October 25, 1995 change in zoning, which prohibited the sign and (2) even if the Appellant could establish that the Sign was established as a lawful, non-conforming use, the Appellant failed to establish that such use continued without an impermissible change or interruption of that use for a period of two years or more; and

WHEREAS, DOB cites to ZR § 52-11 for the requirement that non-conforming uses are permitted to continue except as otherwise provided in Article V, Chapter 2 and that ZR § 52-61 requires that "[I]f for a continuous period of two years . . . the active operation of substantially all the non-conforming uses in any building or other structure is discontinued, such land or building or other structure shall thereafter be used only for a conforming use;" and

WHEREAS, DOB also cites to ZR § 51-00 for the legislative intent and purpose of regulations governing non-conforming uses and to support its position that non-conforming uses are disfavored under the Zoning Resolution and public policy demands strict control and the elimination of such uses; ZR § 51-00 states that "the regulations governing non-conforming uses set forth [in this Chapter] are therefore adopted in order to provide a gradual remedy for existing undesirable conditions resulting from such incompatible non-conforming uses..." and

- Lawful Establishment

WHEREAS, as to the lawful establishment, DOB notes that, per ZR § 12-10, the Appellant must first establish that the Sign existed lawfully on October 25, 1995, the date the zoning district changed from M1-6 to C6-4X; and

WHEREAS, DOB notes that if a use is not established lawfully, it is not a non-conforming use and must be discontinued; and

WHEREAS, as noted above, DOB initially asserted that

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the Appellant failed to establish that the Sign was lawfully established prior to the Rezoning Date because a permit has been required to install an advertising sign since 1938; and

WHEREAS, however, DOB subsequently revised its position to note that the Appellant correctly states that the 1938 Building Code did not require permits for non-illuminated wall signs and that a permit for a non-illuminated wall sign of the Sign's size only required a permit as of the enactment of the 1968 Building Code; and

WHEREAS, DOB stated that the evidence indicates that sometime between December 15, 1961 and October 25, 1995, the Sign and Sign Structure were removed and therefore, any installation of a sign after the removal (if post-1968) would have required a lawfully issued permit in order to establish the lawful, non-conforming use of the Sign as required by the Zoning Resolution; and

WHEREAS, DOB based its assertion on the fact that the Appellant failed to produce a permit for the Sign prior to October 25, 1995; DOB states that it has searched its records and could not find evidence of a permit, but that the burden remains on the Appellant to provide evidence that the Sign was lawfully constructed in order to be considered a non-conforming use; and

WHEREAS, DOB asserts that the evidence established that neither the Sign nor a Sign Structure existed at the site on August 30, 1994, based on a photograph dated August 30, 1994 (the "1994 Photograph") that it concludes reflects the absence of the Sign and Sign Structure; further, DOB cites to a September 16, 2009 letter from the Appellant's prior counsel which states that a Marlboro sign at the site was removed in 1991, and the next evidence to reflect its replacement was a lease dated July 16, 1997 between the owner and a sign company; and

WHEREAS, DOB asserts that the Appellant fails to establish that the sign was lawfully established prior to August 30, 1994 since once the Sign Structure was removed as early as 1991 and as late as August 30, 1994, a permit was required for any sign structure constructed after the August 30, 1994 photograph was taken; and

WHEREAS, on the lawfulness of the sign, DOB concludes that any sign structure installed at the site after August 30, 1994 (when there was admittedly an absence of a Sign) could only be lawfully established with a DOB-issued sign permit; and

WHEREAS, DOB states that evidence of a sign structure prior to December 15, 1961 is not relevant in this case because a sign could have lawfully existed at the site up until October 25, 1995, but a permit would be required to lawfully establish such a use since the enactment of the 1968 Building Code if the sign was removed after 1968 and work was commenced to install a new sign structure; and

WHEREAS, DOB also states that the evidence to prove that the Sign was lawfully established after August 30, 1994 is irrelevant since once the Sign was removed, it could only be lawfully established with a valid permit and, thus, an affidavit indicating that a Cellular One sign was installed at the site on February 2, 1995 is irrelevant particularly since the invoice does not indicate where at the site the sign was installed and an

associated aerial photograph with a letter from a photographer is not relevant or persuasive as it is not clear enough to indicate whether or not a sign exists at the location in question; and

WHEREAS, DOB concludes that based on the evidence indicating that sometime between December 15, 1961 and October 25, 1995, the Sign and Sign Structure were removed and a permit was never obtained for installation of a new sign structure, DOB determines that the Sign was not lawfully established and therefore cannot be considered a lawful non-conforming use; and

- Continuity of the Sign

WHEREAS, DOB states that even if the Appellant established the Sign was a lawful non-conforming use, its evidence of continuity fails to satisfy the Technical Policy and Procedure Notice 14/1988 (the "TPPN"), which sets forth the guidelines for DOB's review of whether a non-conforming use has been continuous; and

WHEREAS, DOB states that if the Board were to accept that the Sign was lawfully established, it still became non-conforming on October 25, 1995 and cannot have been subject to any discontinuance of a period of two years or longer since that time; and

WHEREAS, DOB cites to the TPPN guidelines which include the following types of evidence: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes other forms of evidence including sign permits, which are given substantial weight; other government records, recorded documents and utility bills, generally considered high value evidence; and photographic evidence, which is also given substantial weight; and

WHEREAS, in contrast, DOB states that uncorroborated testimonial evidence that a sign was lawfully established or has existed continuously is not considered sufficient because testimony may be tainted by memory lapses, bias, and misperception; similarly, it states that leases and other contracts that are not corroborated by independently verifiable evidence may not be sufficient because they can be fabricated or materially altered and because they do not demonstrate the actual existence of a sign; and

WHEREAS, DOB finds that the Appellant failed to satisfy the guidelines of the TPPN for acceptable documentation in support of proof of continuous non-conforming use as it did not provide any records issued by a city agency, public utility bills or other TPPN Item (b) records; and

WHEREAS, DOB concludes that the only evidence that the Appellant has provided can be categorized as TPPN Item (c) and (d) evidence –photographs, leases, and affidavits - and that it is insufficient to establish that the Sign has continued without an impermissible change or interruption of that use for a period of two years or more; and

## APPELLANT'S RESPONSE TO DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, in response to DOB's position that the Sign and Sign Structure were removed sometime between the enactment of the 1968 Building Code and the Rezoning Date,

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and therefore a lawfully issued permit would be required to establish the non-conforming use of the Sign, the Appellant states that the Sign Structure has never been replaced with a new structure<sup>1</sup> and therefore a permit is not required to establish the non-conforming use of the Sign; and

WHEREAS, the Appellant states that between 1961 and 2008, the replaceable advertising copy of the Sign was changed numerous times by installing the new advertising copy directly on the Sign Structure, which was specifically designed for the use of replaceable advertising copy; and

WHEREAS, the Appellant notes that Section 27-177 of the 1968 Building Code provided, in relevant part, that “the changing of copy on an existing permitted sign, specifically designed for the use of replaceable copy, and repair of an existing permitted sign, not involving structural changes, shall not require a new permit;” and

WHEREAS, accordingly, the Appellant contends that the changing of the Sign’s replaceable copy on the Sign Structure, which would not require structural changes to the Sign Structure, did not require a permit; and

WHEREAS, in support of its claim that the Sign Structure has never been replaced, the Appellant submitted the February 2, 1995 Service Sign Erectors Invoice, from a licensed sign erector, which states “[i]nstalled Cellular One ad copy;” and

WHEREAS, the Appellant asserts that the invoice reflects that an advertising sign copy was installed on the existing Sign Structure on February 2, 1995, and that if structural work were to be performed, the invoice would have indicated such work; and

WHEREAS, the Appellant submitted an affidavit from the Vice President of Service Sign Erectors stating that the company installed signs on the subject building from about 1961 through 2008, that any and all changes to the advertising copy were installed on the Sign Structure, and that the Sign Structure, as shown in the photograph from April 8, 2010, appears to be the same Sign Structure that the replaceable advertising copy was installed on from 1961 through 2008; and

WHEREAS, the Appellant also submitted an affidavit from the President of Allied Outdoor Advertising, the owner of the Sign Structure from prior to 1961 through 1993, stating that during the time Allied owned and controlled the Sign and Sign Structure, any and all changes to the advertising copy of the Sign were installed on the existing Sign Structure; and

WHEREAS, in response to the Board’s request to provide evidence of standard industry practice related to the replacement of a sign structure, the Appellant submitted an affidavit from the Vice President of Lamar Advertising Company, which has more than 100 years of corporate history and more than 155,000 outdoor advertising sign structures nationwide, which states:

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<sup>1</sup> As described infra, the appellant notes that the bottom angle-iron of the Sign Structure was removed when the Sign was enlarged after the Rezoning Date, because it would have caused damage to the vinyl sign copy, but that pursuant to New York State case law the use of the Sign, as it existed on the Rezoning Date, may be continued.

It is not industry standard to remove an angle-iron designed for replaceable advertising copy, for the following reasons:

- (1) the physical attributes of an angle-iron make it unlikely that it was replaced with a new angle-iron;
- (2) an angle-iron is extremely durable and resistant to the elements, and is designed to maintain its structural stability;
- (3) there have been no advancements in the technology of angle-irons which would encourage their replacement;
- (4) the cost of removal of an angle-iron and to restore the exterior wall, approximately \$5,000, would far outweigh the salvage value of the angle-iron, less than \$50;
- (5) building owners want to continue to generate advertising revenue from the sign structure and therefore not motivated to remove it; and

WHEREAS, in response to DOB’s argument that the 1994 Photograph indicates the absence of a sign or sign structure as of August 30, 1994, the Appellant contends that the 1994 Photograph is insufficient to establish that the Sign Structure was replaced with a new structure; and

WHEREAS, the Appellant argues that while the 1994 Photograph may show the absence of an advertising copy at that time, the aerial photograph was shot at great distance, is of low resolution, and is too grainy to clearly indicate the absence of sign structure; and

WHEREAS, the Appellant states that the Sign Structure’s galvanized steel angle irons are approximately two inches thick, while the wall of the subject building is 216 feet in height; thus, the ratio of thickness of the angle-iron to the height of the wall is 1:1,300, and therefore an extremely high resolution camera with a powerful zoom lens would be required to clearly indicate the absence of a sign structure; and

WHEREAS, the Appellant notes that it submitted a June 1995 photograph reflecting that the Sign and Sign Structure existed as of that date, as well as the Service Sign Erectors Invoice, indicating that the advertising copy was replaced on the Sign Structure in February 1995; therefore the Sign and Sign Structure existed on the site after the 1994 Photograph and prior to the Rezoning Date, and DOB has submitted no evidence in support of its contention that the Sign Structure was ever removed; and

WHEREAS, the Appellant argues that, even if the Sign Structure had been replaced with a new structure after 1968, such work would not have required a permit; and

WHEREAS, specifically, the Appellant contends that the replacement of the angle-iron would have constituted a “minor alteration” or an “ordinary repair” pursuant to the 1968 Building Code, and such work would not have required a permit prior to the enactment of Local Law 14 of 2001, which created an exception to the permit exemption of “ordinary repairs,” which arguably would apply to the replacement of an angle-iron; and

WHEREAS, the Appellant contends that even if the Sign Structure was replaced with a new structure after 1968, and

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even if the replacement had required a permit, the legal non-conforming status of the Sign would have been unaffected, pursuant to the prevailing New York State case law; and

WHEREAS, the Appellant cites to Matter of Cinelli Family Ltd. Partnership v. Scheyer, 50 A.D.3d 1136 (2d Dept. 2008) and City of New York v. Victory Van Lines, 69 A.D.2d 605 (2d Dept. 1979) for the proposition that the courts of the State of New York have recognized the right to maintain a legal non-conforming use established in full conformance with zoning, despite a failure to obtain a required permit; and

WHEREAS, accordingly, the Appellant contends that because the Sign was initially established in full conformance with zoning, the holdings in Matter of Cinelli Family Ltd. Partnership and Victory Van Lines indicate that the use of the Sign may be continued even if the angle-iron was replaced without a permit; and

WHEREAS, the Appellant notes that the size of the Sign prior to the Rezoning Date was approximately 2,660 sq. ft. and it was located on the upper half of the western portion of the south wall; and

WHEREAS, the Appellant states that after the Rezoning Date an enlarged sign was installed on the top angle-iron of the Sign Structure, and the bottom angle-iron of the Sign Structure was removed when the Sign was enlarged because it would have caused damage to the vinyl sign copy; and

WHEREAS, the Appellant argues that although the Sign was enlarged after the Rezoning Date without a permit, pursuant to New York State case law the use of the Sign, as it existed on the Rezoning Date, may be continued; and

WHEREAS, specifically, the Appellant cites to Costa v. Callahan, 41 A.D.3d 1114 (3d Dept. 2007), in which the Appellate Division determined that a junkyard, which was established when the use was conforming, could be continued despite an "impermissible extension of use," and held that a lawfully established non-conforming use is permitted to continue at its "levels" as of the effective date of the zoning map amendment; and

WHEREAS, accordingly, the Appellant argues that based on the prevailing case law, the Sign is permitted to continue at the site as it existed prior to the Rezoning Date, such that the Appellant is authorized to restore the Sign to its size on the Rezoning Date, and to obtain permits to reconstruct the lower structure to accommodate such sign; and

## CONCLUSION

WHEREAS, the Board agrees that the Appellant has met its burden of establishing that the Sign was lawfully established prior to October 25, 1995 and has been in continuous use, without any two-year interruption since that date; and

WHEREAS, specifically, the Board finds the evidence submitted by the Appellant sufficient to establish that: (1) the Sign was lawfully established in, or prior to, September 1961, before a permit was required pursuant to the 1968 Building Code; (2) the Sign Structure has not been removed or replaced since the enactment of the 1968 Building Code; (3) replacing advertising copy on the existing Sign Structure did not require a permit pursuant to the 1968 Building Code; and (4) the use of the Sign has been continuous since October 25, 1995, without any two-year interruption since that date; and

WHEREAS, as to the evidence submitted by the Appellant to establish the continuous use of the Sign since the Rezoning Date, the Board notes that the Appellant provided evidence in the form of photographs, leases, invoices, accounting statements, tax documents, copies of checks, certificates of liability insurance, and letters, and that some combination of this evidence was provided for each year beginning from 1995 (when the Sign became non-conforming) until 2008 (when the ECB Decision was issued) without any gaps; and

WHEREAS, the Board notes that, in addition to the evidence noted above, covering each year from the Rezoning Date until the date of the ECB Decision, the Appellant also submitted 11 affidavits from individuals stating that they personally witnessed the continued existence of the Sign from prior to the Rezoning Date until 2008; and

WHEREAS, the Board agrees with the Appellant that the 1994 Photograph does not establish that the Sign Structure was removed at that time, as the aerial photograph is shot from a great distance away and at a low resolution, such that the presence or absence of a sign structure is not discernable, and therefore the 1994 Photograph is insufficient to rebut the evidence submitted by the Appellant in support of the continued existence of the Sign Structure; and

WHEREAS, the Board notes that while the 1994 Photograph indicates that there was no advertising copy installed at the time the photograph was taken, it finds that the Appellant established that advertising copy could be replaced on the Sign Structure without a permit pursuant to 1968 Building Code Section 27-177, and that the other evidence submitted by the Appellant, including the Service Sign Erectors Invoice indicating that the advertising copy was replaced on February 2, 1995 and the June 1995 photograph reflecting that the Sign and Sign Structure were installed as of that date, is sufficient to establish that the Sign and Sign Structure existed on the site after the 1994 Photograph and prior to the Rezoning Date; and

WHEREAS, as to the enlargement of the Sign after the Rezoning Date, the Board agrees that, despite the impermissible extension of the use, the Appellant is permitted to restore the Sign to its lawfully established dimensions as they existed prior to the Rezoning Date; and

WHEREAS, in sum, the Board concludes as follows: the Appellant has established that the Sign was lawfully established prior to October 25, 1995, and that the Sign has been in continuous use from October 25, 1995 until the ECB Decision.

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on January 12, 2011, is granted.

Adopted by the Board of Standards and Appeals, March 27, 2012.

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## **149-11-A thru 151-11-A**

APPLICANT – Sheldon Lobel, P.C., for Eastern 7 Inc., owner.

SUBJECT – Application September 16, 2011 – Appeal pursuant to NYC Charter §666.7 to permit construction of

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three, two-family homes within 30'-0" of the street line of Eastern Parkway, contrary to Administrative Code §18-112 and New York City Building Code §3201.3.1. R6 zoning district.

PREMISES AFFECTED – 1789, 1793 & 1797 St. John’s Place, northeast corner of intersection formed by St. John’s Place and Eastern Parkway, Block 1471, Lot 65, 67, 68, Borough of Brooklyn.

## COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jordan Most.

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated August 17, 2011, acting on Department of Buildings Application Nos. 320153114, 320153472, and 320153481 read, in pertinent part:

New York City Administrative Code Title 18. It is unlawful for buildings or other erections except porches, plazas, fountains and statuary to remain or at any time to be placed upon any of the lots fronting upon Eastern Parkway, from Washington Avenue easterly to the extension of Eastern Parkway to Bushwick Avenue, within 30 feet from the lines or sides of such streets respectively; and

WHEREAS, this is an application pursuant to New York City Charter §§ 666(6) and 666(7), to vary the prohibition against construction within 30 feet of the street line of Eastern Parkway as set forth in Administrative Code § 18-112 and cited at New York City Building Code § 3201.3.1, to allow for the construction of three three-story two-family residential buildings, within an R6 zoning district, contrary to the Administrative Code and Building Code; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 6, 2012, and then to decision on March 27, 2012; and

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

WHEREAS, the site is an irregular triangular-shaped lot located on the northeast corner of the intersection formed by St. John’s Place and the Eastern Parkway Extension, within an R6 zoning district; and

WHEREAS, the site comprises three tentative tax lots (lots 65, 67, and 68), with a total of 89 feet of frontage to the north on the Eastern Parkway Extension, 105 feet of frontage to the south on St. John’s Place, and a lot area of 2,522 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct three

three-story two-family residential buildings on the site with a total floor area of 5,865 sq. ft.; the building on tentative tax lot 65 is proposed to have a floor area of 1,642 sq. ft., the building on tentative tax lot 67 is proposed to have a floor area of 1,702 sq. ft., and the building on tentative tax lot 68 is proposed to have a floor area of 2,521 sq. ft.; and

WHEREAS, the Administrative Code § 18-112 – Restrictions on Eastern Parkway - (the “Eastern Parkway Restriction”) prohibits construction within 30 feet of the street line of Eastern Parkway, and Building Code § 3201.3.1 – Restrictions on Construction and Projections on Certain Streets, Parkways, Boardwalks, and Beaches – references and requires the enforcement of the Eastern Parkway Restriction of Administrative Code § 18-112; and

WHEREAS, the applicant states that because the proposal reflects construction within 30 feet of the street line on the Eastern Parkway Extension, which is specifically included in the Eastern Parkway Restriction, the subject relief is required; and

WHEREAS, the applicant represents that the proposed buildings comply with all zoning and Building Code regulations, except for the Eastern Parkway Restriction; and

WHEREAS, the Board notes that it has authority to hear appeals of final determinations of the Department of Buildings, as set forth in Charter § 666(6) and that the basis for the subject application is a final determination from the Department of Buildings, with objections that cite to the Administrative Code and the Building Code; and

WHEREAS, the applicant does not contest the Department of Buildings’ interpretation of the cited Administrative Code and Building Code provisions, or assert that the objections are unwarranted or contrary to law; and

WHEREAS, instead, the subject application seeks a modification of the Administrative Code’s Eastern Parkway Restriction and the related Building Code provision, pursuant to the Board’s authority under Charter § 666(7); and

WHEREAS, if all other requirements of Charter § 666 are met, including the subject matter and source of the final determination, 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; and

WHEREAS, as to the practical difficulties and hardship, the applicant represents that the site’s irregular shape and shallow depth constrain development of the premises; and

WHEREAS, specifically, the applicant states that the site is triangularly shaped with a maximum through lot depth of only 56 feet, and that the application of the 30-ft. setback requirement precludes any realistic development on the site; and

WHEREAS, the applicant submitted drawings reflecting that the 30-ft. setback area required by the Eastern Parkway Restriction would leave behind a buildable portion of the site that consists of a triangular shaped area approximately 43 feet



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# MINUTES

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by 26 feet by 50 feet, with a total area of only 555 sq. ft.; and

WHEREAS, the applicant states that the small size and irregular shape of the buildable portion of the site makes any development of the site in compliance with the Eastern Parkway Restriction infeasible; and

WHEREAS, the Board agrees that due to the irregular shape and shallow depth of the lot the applicant has established that there are practical difficulties in constructing a building that complies with the Eastern Parkway Restriction and the Building Code; and

WHEREAS, as to the spirit of the law, the applicant represents that the purpose of the Eastern Parkway Restriction, which the City adopted in 1888, and the Building Code, which reinforces it, was to create a park-like setting over the several miles of the western portion of Eastern Parkway; and

WHEREAS, the applicant notes that the portions of Eastern Parkway, west of Ralph Avenue, were built in compliance with the Eastern Parkway Restriction; and

WHEREAS, in contrast, the applicant represents that the area surrounding the site along the Eastern Parkway Extension does not have an established context of Eastern Parkway Restriction compliance; and

WHEREAS, specifically, the applicant notes that the entire Eastern Parkway Extension, beginning at Ralph Avenue and spanning west to Bushwick Avenue, reflects that a majority of the lots are occupied by buildings constructed within 30 feet of the Eastern Parkway Extension, contrary to the Eastern Parkway Restriction; and

WHEREAS, the applicant submitted a study which analyzed the compliance of the lots along the Eastern Parkway Extension from Ralph Avenue to St. Marks Place with the 30-ft. setback requirement of the Eastern Parkway Restriction; and

WHEREAS, the study reflected that 84 of the 94 developed lots in the study area, or 89 percent, do not comply with the 30-ft. setback requirement; and

WHEREAS, the applicant also submitted a Department of Finance tax map which reflects that there are five blocks along the Eastern Parkway Extension in the vicinity of the site with building footprints that are either built to the lot line or nearly to it; and

WHEREAS, the applicant notes that the proposed construction would also continue the existing streetwall along the Eastern Parkway Extension on the subject block; and

WHEREAS, the applicant submitted a streetscape and survey reflecting that the proposed buildings will line up with the adjacent buildings on the subject block; and

WHEREAS, the Board agrees with the applicant that although the Eastern Parkway Restriction includes the Eastern Parkway Extension, that the Extension, with a number of lots with shallow depths in the 40-ft. range, and a distance from the western park blocks, was not the focus for the Eastern Parkway Restriction; and

WHEREAS, additionally, the Board notes the existing condition along the Eastern Parkway Extension, which is occupied by a stock of buildings that date back 100 years or more lacks any context for a 30-ft. setback; and

WHEREAS, accordingly, the Board finds that the proposed construction within the 30-ft. setback does not

conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that the proposed construction, but for the Eastern Parkway Restriction, is completely as-of-right, and will comply with all procedures and requirements of the Department of Buildings ("DOB"), thereby ensuring that public safety will be secured; and

WHEREAS, the Board agrees that the proposed project will not interfere with public safety; and

WHEREAS, as to substantial justice, the applicant notes that the majority of the sites along the Eastern Parkway Extension have been developed without 30-ft. setbacks and, thus, the requirement of compliance with the Eastern Parkway Restriction would make development on the site infeasible and would create a serious economic loss; and

WHEREAS, accordingly, the Board concurs that substantial justice is maintained; and

WHEREAS, the Board notes that the applicant does not seek a variance of the Housing Maintenance Code and, thus, that finding is not relevant to the subject application; and

WHEREAS, additionally, the Board notes that, according to the applicant, the proposal will be in full compliance with all other provisions of the Administrative Code and the Building Code, as well as the Multiple Dwelling Law, and the Zoning Resolution; and

WHEREAS, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under Charter § 666(7) and varies Administrative Code § 18-112; the Board notes that the variance of the Eastern Parkway Restriction addresses the non-compliance with Building Code § 3201.3.1, by reference; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the site as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application.

*Therefore it is Resolved*, that the decisions of the Brooklyn Borough Commissioner, dated August 17, 2011, are modified and that this application is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received December 30, 2011" - nine (9) sheets; and on further condition:

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

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

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

Adopted by the Board of Standards and Appeals, March 27, 2012.

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# MINUTES

## 45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application July 20, 2011 – Extension of time to complete construction, which expired on July 10, 2011, in accordance with a previously approved common law vested rights application for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for decision, hearing closed.

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## 206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

For Opposition: Carol Donovan and Richard Habib.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 10 A.M., for decision, hearing closed.

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## 122-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mitchell Pacifico, owner.

SUBJECT – Application August 23, 2011 – Proposed construction of a one family dwelling located partially within the bed of a mapped street, contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 5 Bement Avenue, southeast corner of Bement Avenue and Richmond Terrace, Block 150, Lot 4, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto of Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for decision, hearing closed.

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## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Peter Geis.

For Opposition: Alice Baldwin.

For Administration: Mark Davis of Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for decision, hearing closed.

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## 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Scaduto of Department of Fire.

For Opposition: Eric Palatnik and James MacDonald.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for decision, hearing closed.

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# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, MARCH 27, 2012  
1:30 P.M.**

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

**ZONING CALENDAR**

**4-12-BZ**

**CEQR #12-BSA-064M**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56<sup>th</sup> and Park (NY) Owner, LLC.

SUBJECT – Application January 11, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Wright Fit*). C5-3/C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 432-440 Park Avenue, northwest corner of Park Avenue and East 56<sup>th</sup> Street, Block 1292, Lot 33, 43, 45, 46, Borough of Manhattan.

**COMMUNITY BOARD #5M**

**APPEARANCES –**

For Applicant: Gary R. Tarnoff.

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

**THE VOTE TO GRANT –**

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

**THE RESOLUTION –**

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2011, acting on Department of Buildings Application No. 120628776, reads in pertinent part:

“Proposed physical culture establishment is not permitted as of right in a C5-2.5 & C5-3 district as per ZR 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment (PCE) on portions of the first and fourth floors and the entire sixth and seventh floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, and then to decision on March 27, 2012; and

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

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

WHEREAS, the subject site is an irregularly shaped lot located on the northwest corner of Park Avenue and East 56<sup>th</sup> Street, with a mid-block portion that fronts on both East 56<sup>th</sup> Street and East 57<sup>th</sup> Street, in the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district; and

WHEREAS, the applicant proposes to construct an 82-story mixed-use residential/ commercial building at the site; and

WHEREAS, the PCE will occupy a total of approximately 20,660 sq. ft. of floor area on portions of the first and fourth floors, and the entire sixth and seventh floors; and

WHEREAS, the PCE will be operated by the Wright Fit; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District (MID); and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Special Midtown District (MID) and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; and

WHEREAS, at hearing, the Board directed the applicant to address the sound attenuation measures that will be provided in the proposed PCE; and

WHEREAS, in response, the applicant states that residential occupancy of the proposed building will begin at the 14<sup>th</sup> floor, and therefore there will be significant separation between the proposed PCE and any residential uses in the building; and

WHEREAS, the applicant also submitted revised plans reflecting that the seventh floor will provide a six-inch floating concrete floor above the ten-inch structural concrete slab, in order to provide sound attenuation for the PCE equipment located on that floor; and

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

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

WHEREAS, the Board finds that, under the conditions

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA064M, dated January 11, 2012; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment on portions of the first and fourth floors and the entire sixth and seventh floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 13, 2012"- (7) sheets, and *on further condition*:

THAT the term of this grant will expire on March 27, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

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

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

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

THAT sound attenuation measures will be provided as shown on the BSA-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

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

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, March 27, 2012.

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## 71-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 1:30 P.M., for continued hearing.

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## 96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6<sup>th</sup> Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of east 6<sup>th</sup> Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for adjourned hearing.

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## 120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1) in a new commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29<sup>th</sup> Street, corner of 29<sup>th</sup> Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for decision, hearing closed.

## 167-11-BZ

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 20, 2011 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) with an accessory drive-through facility. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to April 24, 2012, at 1:30 P.M., for decision, hearing closed.

## 183-11-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for S.K.I. Realty, Inc., owner; Memorial Hospital for cancer and Allied Diseases, lessee.

SUBJECT – Application December 5, 2011 – Variance (§72-21) to allow the construction of a new outpatient surgical center (*Memorial Hospital for Cancer and Allied Diseases*), contrary to floor area ratio (§33-123); rear yard (§33-261) height and setback (§33-432); and curb cut (§13-142) regulations. C1-9/C8-4 zoning districts.

PREMISES AFFECTED – 1133 York Avenue, north side of east 61<sup>st</sup> Street, westerly from the corner formed by the intersection of the northerly side of East 61<sup>st</sup> Street and the westerly side of York Avenue, Block 1456, Lot 21, Borough

of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Shelly Friedman, Peter Scardino, Carol Brown, Jeff Brand, Doug Roy, Elena Aristove and Chi Chan.

For Opposition: Chris Wright, Cabot Marks, Nicole Detko, Chris Kossifos, Pina Sanelli, Rhoda Keller, Sandra Bachrach, Ross Mallon, Curtis M. Sawyer, Howard Brumer, Adam Zeliger, R. Evans H. Dorfman, Valerie Lee, Danielle Leader, Delia Hammock, Paul Stoler and Lenny Dukhon.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 1:30 P.M., for continued hearing.

## 193-11-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

Additional (neither for or against): Milton Berger.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 1:30 P.M., for continued hearing.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

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Volume 97, No. 15

April 11, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

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New Case Filed Up to April 3, 2012  
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**72-12-BZ**

213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue, Block 1135, Lot(s) 11, Borough of **Brooklyn, Community Board: 06**. Variance (§72-21) seeking approval to waive the residential off-street parking requirements for the site and waive the residential floor area, open space, lot coverage, maximum base height and maximum building height regulations for the small portion of the site zoned R6B to facilitate the construction of a mixed-use building with retail located on the ground floor and residential dwelling units located on the 2nd through 6 floors. R7A/C2-4 and R6B district.  
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**73-12-BZ**

41-19 Bell Boulevard, east side of Bell Boulevard between 41st Avenue (south of LIRR tracks) and 42nd Avenue, Block 6290, Lot(s) 5, Borough of **Queens, Community Board: 11**. Application for a special permit to legalize an existing physical culture establishment in a C2-2 district. C2-2 in an R6B district.  
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**74-12-BZ**

252 Exeter Street, West side, 350'-0" North of Esplanade between the Esplanade and Oriental Boulevard, Block 8742, Lot(s) 2, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family residence contrary to floor area, open space and lot coverage (ZR 23-141); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district. R3-1 district.  
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**75-12-BZ**

547 Broadway, Broadway, between Prince Street and Spring Street, Block 498, Lot(s) 15, Borough of **Manhattan, Community Board: 02**. Variance (§72-21) to permit the legalization of a the use of retail (UG 6) on the first floor and expand the use into the cellar with accessory use in the sub-cellar contrary to §42-14 (D)(2)(b) of the New York City Zoning Resolution. M1-5B zoning district. M1-5B district.  
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**76-12-BZ**

148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot(s) 18, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the minimum side yards (23-461). R3-1 zoning district. R3-1 district.  
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**77-12-BZ**

91 Franklin, 82'3" southerly from the southeasterly side corner of Franklin Avenue and Park Avenue., Block 1899, Lot(s) 24, Borough of **Brooklyn, Community Board: 03**. Proposed new 5 story residential building in an M1-1 zone, which is contrary to ZR42-00 use regulations. M1-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**



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# CALENDAR

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**MAY 1, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 1, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **305-00-BZ**

APPLICANT – Robert A. Caneco, for Robert Gullery, owner.

SUBJECT – Application April 16, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the continued operation of a UG8 open parking lot which expired on January 15, 2004; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 268 Adams, south side of Adams Avenue between Hylan Boulevard and Boundary Avenue, Block 3672, Lot 14, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### **359-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.

SUBJECT – Application February 3, 2012 – Application (ZR§§72-01 and 72-22) to request an amendment to the plans previously approved by the BSA to permit the enclosure of an existing open areaway at the premises for use as one-story shared entrance way, which would increase the lot coverage and floor area ratio contrary to ZR §24-11 and BSA Cal. No. 359-01-BZ. R6 zoning district.

PREMISES AFFECTED – 5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Block 5649, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### **395-04-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah, owner; Meyer Undorfer, lessee.

SUBJECT – Application April 3, 2012 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) for the proposed construction of a UG4 synagogue which expired on November 1, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on November 1, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 1232 54<sup>th</sup> Street, southwest side 242'6" southeast of the intersection formed by 54<sup>th</sup> Street and 12<sup>th</sup> Avenue, Block 5676, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### **128-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Application filed to amend previously BSA approved resolution to allow increase in proposed building height, total floor area and to include an elevator lift as a solution for handicap access. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Loy 31, Borough of Queens.

**COMMUNITY BOARD #8Q**

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## **APPEALS CALENDAR**

### **19-12-A**

APPLICANT – Goldman Harris LLC, for 38-30 28<sup>th</sup> Street, LLC, owner.

SUBJECT – Application January 30, 2012 – Request for a determination that the Applicant has obtained a vested right under the common law to continue construction and obtain a Certificate of Occupancy. M1-2 R5BLIC Zoning District.

PREMISES AFFECTED – 38-30 28<sup>th</sup> Street, between 38<sup>th</sup> and 39<sup>th</sup> Avenues. Block 386, Lot 27. Borough of Queens.

**COMMUNITY BOARD #1Q**

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### **41-12-A**

APPLICANT – Queen First Properties, LLC, for Mohammad Uddin, owner.

SUBJECT – Application February 15, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R5A Zoning District.

PREMISES AFFECTED – 112-26 38<sup>th</sup> Avenue, 225' from the corner of 112<sup>th</sup> Street and 38<sup>th</sup> Avenue. Block 1785, Lot 10. Borough of Queens.

**COMMUNITY BOARD #3Q**

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# CALENDAR

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**MAY 1, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 1, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**187-10-BZ**

APPLICANT – Khalid M. Azam, Esq., owner.  
SUBJECT – Application October 5, 2010 – Variance (§72-21) to permit the legalization of a three family building which does not comply with the side yard zoning requirements (ZR §23-462(c)). R6B zoning district.  
PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**187-11-BZ**

APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.  
SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial building, contrary to use regulations, ZR 42-00. M1-1 zoning district.  
PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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**40-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.  
SUBJECT – Application February 14, 2012 – Application for special permit under Z.R. §73-36 for new physical culture establishment (Global Health Clubs). C2-1 zoning district.  
PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**42-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for 158 West 27<sup>th</sup> Street, LLC, owner; 158 West 27<sup>th</sup> Fitness Group, LLC, lessee.

SUBJECT – Application February 16, 2012 – Application filed pursuant to Z.R. §§ 42-31 and 73-36 seeking a special permit to allow the operation of a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises.

PREMISES AFFECTED – 158 West 27<sup>th</sup> Street, located on the south side of 27<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, APRIL 3, 2012  
10:00 A.M.**

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

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## SPECIAL ORDER CALENDAR

### 348-75-BZ

APPLICANT – Eric Palatnik, P.C., for Moises A. Villa Delgado, owner.

SUBJECT – Application October 31, 2011 – Extension of the term of an approved variance that expired on March 9, 1996 to allow for a UG 16 animal hospital, contrary to use regulations. Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 1050 Forest Avenue, between Manor Road and Raymond Place, Block 315, Lot 39, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver, and an extension of term for the continued use of the site as an animal hospital (Use Group 16), which expired on March 9, 1996; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 3, 2012; and

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

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

WHEREAS, the site is located on the south side of Forest Avenue between Manor Road and Raymond Place, partially within an R3-2 zoning district and partially within an R2 zoning district; and

WHEREAS, the site is an irregularly shaped lot with 75 feet of frontage on Forest Avenue, a depth ranging from 247 feet to 266 feet, and a total lot area of 20,805 sq. ft.; and

WHEREAS, the site consists of a three-story building occupied by an animal hospital (Use Group 16) with an accessory caretaker’s apartment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 9, 1976 when, under the subject calendar number, the Board granted a variance to permit a one-story enlargement to an existing two-story building occupied as an animal hospital with an accessory caretaker’s apartment, for a term of five years; and

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

WHEREAS, most recently, on June 10, 1986, the Board granted a ten-year extension of term, which expired on March 9, 1996; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, in support of its representation that the animal hospital has been operating continuously at the site since the expiration of the Board’s prior grant in 1996, the applicant initially submitted annual invoices for the animal hospital from 1996 through 2010; and

WHEREAS, at hearing, the Board directed the applicant to provide evidence in support of the use of the site as an animal hospital since 2010; and

WHEREAS, in response, the applicant submitted additional invoices which document the continuous use of the site as an animal hospital from the period from 2010 through 2012; and

WHEREAS, the Board finds that the evidence submitted by the applicant is sufficient to establish that the animal hospital has operated continuously at the site since the expiration of the Board’s prior extension of term grant in 1996; and

WHEREAS, the Board also directed the applicant to provide screening around the dumpster and questioned the location of the greenhouse that is shown on the previously-approved plans; and

WHEREAS, in response, the applicant submitted revised plans reflecting that a fence with a height of four feet will be installed to screen the dumpster area, and represents that the greenhouse that was depicted in the previously-approved plans was never constructed on the site; and

WHEREAS, based upon the above, the Board finds that the requested ten-year extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated March 9, 1976, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the date of the grant, to expire on April 3, 2022; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received March 6, 2012’- eight (8) sheets; and *on further condition*:

THAT the term of the grant will expire on April 3, 2022;

THAT the above condition will be reflected on the certificate of occupancy;

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

# MINUTES

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (Alt. 129-75)

Adopted by the Board of Standards and Appeals April 3, 2012.

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## 286-00-BZ

APPLICANT – Law Offices of Mitchell S. Ross, for Whitewall Properties II, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application January 27, 2012 – Extension of Term of a Special Permit (§73-36) for a physical culture establishment (*New York Health and Racquet Club*) located on the first and second floors of a 20-story mixed-use building, which expired on March 27, 2011; Waiver of the Rules. C6-3A/C6-4M zoning district.

PREMISES AFFECTED – 60 West 23<sup>rd</sup> Street, northeast corner of Sixth Avenue and West 23<sup>rd</sup> Street, Block 824, Lot 11, Borough of Manhattan.

### COMMUNITY BOARD #5M

#### APPEARANCES –

For Applicant: Mitchell S. Ross.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on March 27, 2011; and

WHEREAS, a public hearing was held on this application on March 20, 2012, after due notice by publication in *The City Record*, and then to decision on April 3, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on a corner through lot bounded by West 22<sup>nd</sup> Street to the south, Sixth Avenue to the west, and West 23<sup>rd</sup> Street to the north, partially within a C6-3A zoning district and partially within a C6-4M zoning district; and

WHEREAS, the PCE occupies a total of 38,798 sq. ft. of floor area on the first and second floor of a 20-story mixed-use

commercial/residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 27, 2001 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, which expired on March 27, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 27, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from March 27, 2011, to expire on March 27, 2021, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on March 27, 2021;

THAT the above condition shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 101962814)

Adopted by the Board of Standards and Appeals, April 3, 2012.

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## 148-10-BZ

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application June 23, 2011 – Amendment to an approved special permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47) and side yard (§23-461). The amendment seeks to correct open space and floor area calculations and adds a waiver to the perimeter wall height. R3-2 zoning district. PREMISES AFFECTED – 1559 East 29<sup>th</sup> Street, between Avenue P and Kings Highway, Block 7690, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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# MINUTES

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to modify the previously approved plans for an enlargement of an existing single family home; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 3, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 29<sup>th</sup> Street, between Avenue P and Kings Highway, within an R3-2 zoning district; and

WHEREAS, on November 23, 2010, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-622, to permit the enlargement of an existing single-family home, which resulted in non-compliances as to floor area ratio (“FAR”), open space ratio, rear yard, and side yards; and

WHEREAS, the applicant now seeks an amendment to correct the calculations related to FAR, open space, lot coverage, and side yard, and to include an additional waiver for the perimeter wall height; and

WHEREAS, specifically, the applicant seeks to correct the calculations it provided for the prior approval, to reflect: (1) a reduction in the floor area from 2,414 sq. ft. (0.86 FAR) to 2,308 sq. ft. (0.83 FAR); an increase in the open space from 1,490 sq. ft. (53 percent) to 1,540 sq. ft. (55 percent); (3) a decrease in the lot coverage from 1,310 sq. ft. (47 percent) to 1,236 sq. ft. (45 percent); and (4) an increase in the width of the side yard along the northern lot line from 3’-0” to 3’-6”;

and (4) an increase in the width of the side yard along the northern lot line from 3’-0” to 3’-6”;

WHEREAS, the applicant notes that all of the requested corrections reduce the degree of non-compliance approved in the original grant; and

WHEREAS, the applicant also requests an amendment to reflect the correct perimeter wall height of 22’-5” (a maximum perimeter wall height of 21’-0” is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-2 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a streetscape establishing that the adjacent home to the north, 1555 East 29<sup>th</sup> Street, has a perimeter wall height of 22’-5”;

and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls

within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21’-0”;

and

WHEREAS, the applicant represents that no other changes are proposed; and

WHEREAS, accordingly, the Board finds that the requested change is within the scope of the original grant and does not affect the required special permit findings; and

WHEREAS, based upon its review of the record, the Board finds 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, dated November 23, 2010, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the BSA-approved plans; *on condition* that all work and site conditions shall comply with drawings marked “Received February 21, 2012”– (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 2,308 sq. ft. (0.83 FAR); a minimum open space of 55 percent; a maximum lot coverage of 45 percent; a maximum perimeter wall height of 22’-5”;

a side yard with a minimum width of 3’-6” along the northern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 320155880)

Adopted by the Board of Standards and Appeals, April 3, 2012.

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## 319-53-BZ

APPLICANT – Ficara & Associates, P.C., by Majed El Jamal, for 22<sup>nd</sup> Street Realty LLC, owner.

SUBJECT – Application August 16, 2011 – Extension of Term (§11-411) for the continued operation of an automotive repair shop with no body work which expired on January 31, 2011; Waiver of the Rules. R5 zoning district. PREMISES AFFECTED – 1135 East 22<sup>nd</sup> Street, northwest corner of Eastchester Road, Block 4900, Lot 12, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: John Anzalone.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for continued hearing.

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# MINUTES

## 808-55-BZ

APPLICANT – Sheldon Lobel, P.C., for 35 Bell Realty Inc., owner; Cumberland Farms, Inc., lessee.

SUBJECT – Application February 14, 2012 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) with accessory convenience store which expired on March 27, 2012; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, southwest corner of the intersection formed by Bell Boulevard and 35<sup>th</sup> Avenue, Block 6169, Lot 6, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for continued hearing.

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## 433-61-BZ

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.

SUBJECT – Application November 28, 2012 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations; Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for adjourned hearing.

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## 997-84-BZ

APPLICANT – Akerman Senterfitt, for 222 Union Associates, owner; Central Parking System of New York, Inc., lessee.

SUBJECT – Application February 6, 2012 – Extension of Time to obtain a Certificate of Occupancy for an existing six story public parking garage with an automobile rental establishment which expired on June 4, 2008; waiver of the rules. R6A zoning district.

PREMISES AFFECTED – 800 Union Street, southside of Union Street between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 957, Lot 29, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Jessica A. Loeser.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for decision, hearing closed.

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## 64-96-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.

SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.

PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14<sup>th</sup> Avenue, Block 4645, Lot 3, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for continued hearing.

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## 256-02-BZ

APPLICANT – Goldman Harris LLC, for 160 Imlay Street Real Estate, owner.

SUBJECT – Application February 10, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on March 18, 2012. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, bounded by Imlay, Verona and Commerce Streets and Atlantic Basin, Block 515, Lot 75, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Engene Travors.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176<sup>th</sup> Street, between Jamaica and 90<sup>th</sup> Avenues, Block 9811, Lot 61(tent), Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Appeal granted.

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# MINUTES

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## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a three-story three-family residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with continued hearings on February 28, 2012 and March 20, 2012, and then to decision on April 3, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on 176<sup>th</sup> Street between Jamaica Avenue and 90<sup>th</sup> Avenue and has a lot area of 5,280 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a three-story three-family residential building (Use Group 2), with approximately 10,623 sq. ft. of floor area (1.72 FAR) (the “Building”); and

WHEREAS, the applicant states that the subject site is one of five tax lots (comprising two zoning lots) that were planned to be developed with a total of five three-story, three-family residential buildings; and

WHEREAS, the applicant notes that the Board previously granted an extension of time to complete construction pursuant to ZR § 11-332 for the other four buildings (BSA Cal. Nos. 283-09-BZY through 286-09-BZY); and

WHEREAS, the applicant further notes that two of the adjacent buildings for which the Board granted an extension of time to complete construction under BSA Cal. Nos. 283-09-BZY through 286-09-BZY are located on the subject zoning lot (the “Adjacent Buildings”); and

WHEREAS, on October 7, 2008, under BSA Cal. No. 230-07-BZY, the Board denied an application for an extension of time to complete construction for the subject building pursuant to ZR § 11-331, predicated on the Department of Buildings’ (“DOB”) determination that the permit was invalid; and

WHEREAS, specifically, the Board found that, pursuant to DOB’s determination, the applicant did not meet the ZR § 11-331 threshold requirement that the “building permit has been lawfully issued” prior to the effective date of the amendment to the Zoning Resolution; and

WHEREAS, the applicant represents that it has since resolved all objections to the permit with DOB, and now seeks a determination that the owner has obtained the right to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, the subject premises is currently located

within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, on July 5, 2007, DOB issued New Building Permit No. 402568431-01-NB (the “NB Permit”) for the Building; and

WHEREAS, however, on September 10, 2007 (the “Enactment Date”), the City Council voted to adopt the Jamaica Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, because the site is now within an R4-1 district, the Building would not comply with the new zoning restrictions; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the Board notes that, as discussed in its denial of BSA Cal. No. 230-07-BZY, DOB revoked the NB Permit on June 17, 2008 based on an outstanding objection concerning the noncompliance of the plans with the required dimensions of an inner court; and

WHEREAS, the applicant states that it has since resolved all objections pertaining to the inner court, and DOB has submitted an Objection sheet dated February 4, 2009, indicating that the objection related to the inner court (ZR § 23-85) has been removed; and

WHEREAS, by letter dated November 3, 2011, DOB rescinded the permit revocation; and

WHEREAS, by letter dated November 10, 2011, DOB states that the NB Permit was lawfully issued, authorizing construction of the Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the NB Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

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WHEREAS, as to substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following work at the site: 100 percent of the excavation work and approximately 35 percent of the foundation work, including the pouring of concrete for footings and foundation walls; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a foundation plan, construction contracts, an affidavit from the owner, concrete pour tickets, and photographs of the site showing the amount of work completed prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$32,273, including hard and soft costs and irrevocable commitments, out of \$250,000 budgeted for construction of the Building; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 13 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning it would be impossible to develop the remainder of the zoning lot without demolishing the Adjacent Buildings, which are located on the subject zoning lot; and

WHEREAS, accordingly, the applicant represents that the inability to vest under the former R6 zoning would result

in the loss of the entire Building; and

WHEREAS, the Board agrees that the inability to construct any building on the subject zoning lot under the R4-1 regulations without demolishing the Adjacent Buildings, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the Enactment Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 402568431-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, April 3, 2012.

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## 119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Margery Perlmutter.

Additional (neither for or against): Joan Byrnes – Senator Golden.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Recused: Commissioner Hinkson.....1

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for decision, hearing closed.

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## 155-11-A

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of



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Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Joel A. Siegel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for decision, hearing closed.

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## 162-11-A

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jessica a. Loeser.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for continued hearing.

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## 173-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Southside Manhattan View LLC, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction under the prior R4 zoning. R4-1 Zoning district.

PREMISES AFFECTED – 68-10 58<sup>th</sup> Avenue, south side of 58<sup>th</sup> Avenue, 80’ east of intersection of 58<sup>th</sup> Avenue and Brown Place, Block 2777, Lot 11, Borough of Queens.

## COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Todd Dale and Panagis Geopaopoulos.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 10 A.M., for continued hearing.

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## 25-12-A

APPLICANT – Slater & Beckerman, LLP for F.B Capital Inc., owners

SUBJECT – Application February 2, 2012 – Appeal challenging a determination by the Department of Buildings not to revoke the permit associated with the reconstruction

of a building, which includes construction in the required rear yard and does not comply with the requirements of ZR §54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70<sup>th</sup> Street, south side of East 70<sup>th</sup> Street, between Park Avenue and Lexington Avenue, block 1404, Lot 67, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Carole Slater, Cornelius Dennis and Matt Markowitz.

For Opposition: Deirdre Carson.

For Administration: Amandus Derr of Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for decision, hearing closed.

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## 27-12-A

APPLICANT – Greenberg Traurig, LLP, for F.B. Capital, LLC, owner.

SUBJECT – Application February 6, 2012 – Appeal challenging a determination by the Department of Buildings that more than 75 percent of the floor area was demolished and the building was not a single-family home so that reconstruction of the non-complying building was not permitted pursuant to ZR §54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70<sup>th</sup> Street, north side of East 70<sup>th</sup> Street, 125’ east of Park Avenue and 260’ west of Lexington Avenue, Block 1404, Lot 67, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Deirdre Carson.

For Administration: Amandus Derr of Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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**REGULAR MEETING  
TUESDAY AFTERNOON, APRIL 3, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**31-10-BZ**

**CEQR #10-BSA-050Q**

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

**COMMUNITY BOARD #4Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 13, 2011, acting on Department of Buildings Application No. 401400239, reads in pertinent part:

1. Proposed commercial use for portion of lot 41 in R5 district (parking @ cellar) is contrary to ZR Section 22-00;
2. Proposed parking contrary to ZR Section 36-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within a C1-2 (R6) zoning district, a C2-3 (R6) zoning district, a C1-2 (R7A) zoning district, and an R5 zoning district, a two-story and mezzanine commercial building with an accessory parking garage at the cellar level, which does not comply with the zoning regulations for use or parking, contrary to ZR §§ 22-00 and 36-21; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in the *City Record*, with continued hearings on April 12, 2011, August 16, 2011, September 27, 2011 and December 13, 2011, and then to decision on April 3, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommended conditional approval of a prior iteration of the application, described below, which requested additional waivers related to bulk; and

WHEREAS, City Council Member Daniel Dromm recommends approval of this application; and

WHEREAS, a member of the community provided oral testimony in opposition to the prior iteration of the application; and

WHEREAS, the site is located on an irregularly-shaped through lot with 200 feet of frontage on Queens Boulevard to the south, 170 feet of frontage on Broadway to the east, and 150 feet of frontage on Reeder Street to the west, with a total lot area of 35,564 sq. ft.; and

WHEREAS, the site is located within four separate zoning districts: (1) 25,904 sq. ft. of the site is within a C1-2 (R6) zoning district; (2) 5,844 sq. ft. of the site is within a C2-3 (R6) zoning district; (3) 3,582 sq. ft. of the site is within an R5 zoning district; and (4) 233.5 sq. ft. of the site is within a C1-2 (R7A) zoning district; and

WHEREAS, the site comprises two tax lots; Lot 41, which comprises the western portion of the site at the corner of Reeder Street and Queens Boulevard, is occupied by a one-story eating and drinking establishment (a Wendy's restaurant) which is proposed to be demolished; and Lot 28 which comprises the eastern portion of the site at the corner of Broadway and Queens Boulevard, is currently vacant; and

WHEREAS, the applicant submitted a report from a title company which states that, according to Department of Finance records, there have been no changes to the tax map since 1961 and therefore the dimensions of the lots have remained the same since that time; and

WHEREAS, the applicant proposes to construct a two-story and mezzanine commercial building with a floor area of 63,894 sq. ft. (1.80 FAR), with retail (Use Group 6) at the first floor and a food store (Use Group 6) at the first floor mezzanine and second floor, a height of 48 feet, and 111 accessory parking spaces (and 11 queuing spaces) at the cellar level; and

WHEREAS, the proposal will have the following non-complying parameters: 111 accessory parking spaces (and 11 queuing spaces) (the minimum number of accessory parking spaces required for the proposed building is 264); and accessory parking located in the R5 portion of the site (commercial use is not permitted in the R5 district); and

WHEREAS, the applicant initially proposed a five-story commercial building with a floor area of 121,339 sq. ft. (3.41 FAR), a total height of 88 feet, and 251 accessory parking spaces, to be occupied by Use Group 6 retail use at the first, second, and third floors, and accessory parking at the cellar, fourth, and fifth floors; and

WHEREAS, the original proposal complied with the required number of parking spaces under ZR § 36-21, but necessitated a use variance for the portion of the building

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located in the R5 district, and necessitated bulk waivers associated with floor area, lot coverage, front yard, side yard, rear yard, height, and parking located more than 23'-0" above curb level; and

WHEREAS, the Board expressed concern about the size of the proposed building and the extent of the requested variance, and directed the applicant to revise the application to provide the maximum number of parking spaces within a building that complied with the underlying bulk regulations; and

WHEREAS, in response, the applicant revised the application to provide an interim proposal for a two-story and mezzanine commercial building with a 91-space (and nine queuing spaces) accessory parking garage at the cellar level located entirely within the commercial portion of the zoning lot; the interim proposal complied with all underlying zoning regulations with the exception of the minimum number of parking spaces; and

WHEREAS, in response to additional concerns raised by the Board regarding the number of parking spaces provided, the applicant revised the plans to reflect the subject proposal, which extends the cellar level accessory parking garage into the R5 portion of the zoning lot, thereby providing 20 additional parking spaces but triggering the need for the requested use waiver; and

WHEREAS, because the proposed accessory commercial parking is not permitted within the R5 portion of the site and because the building does not provide the required number of accessory parking spaces, the applicant requests the subject variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the presence of an MTA subway tunnel below the site; (2) the high water table at the site; (3) the location within four different zoning districts; and (4) the irregular shape of the site; and

WHEREAS, as to the presence of the MTA subway tunnel, the applicant submitted an engineer's report which states that an MTA subway tunnel easement runs beneath the northeast corner of the subject site; and

WHEREAS, the applicant states that the subway tunnel is a "cut and cover" style tunnel, and is therefore located very close to the surface, and there is a subway station (the Grand Avenue – Newtown station) located directly below the site; and

WHEREAS, the applicant represents that there are practical difficulties associated with developing directly over the subway tunnel and subway station; and

WHEREAS, specifically, the applicant states that the portion of the proposed underground parking structure adjacent to the subway tunnel easement must be designed to safely support all of the imposed loads so as to protect the existing subway structure; and

WHEREAS, the applicant notes that the presence of the subway tunnel and easement also requires the owner to file plans with the MTA and to comply with all restrictions placed on the work, as the MTA will not allow any potential for disturbance of the existing subway structure; and

WHEREAS, the engineer's reports submitted by the applicant states that, due to the existing subway tunnel, a temporary soil bracing system will be required for the proposed excavation to achieve the planned parking level bottom (mat foundation slab), and that heavy steel HP Soldier Piles supported by steel walers, raker bracing, and wood lagging should be installed along the entire perimeter of the proposed excavation site so that the building would bypass the tunnel; and

WHEREAS, the applicant states that the location of the subway tunnel and subway station preclude the use of a portion of the site for underground parking or for cellar floor area, and therefore the proposed underground parking structure must be located to the west of the subway easement, which is approximately 15 feet away from the subway tunnel foundation wall; and

WHEREAS as to the high water table on the site, the engineer's report submitted by the applicant states that the soil borings performed on the site encountered groundwater at depths ranging from 9'-0" to 11'-6" below grade, and groundwater is expected to be encountered during the excavation for the construction of the proposed building and foundations; and

WHEREAS, the engineer's report states that, due to the location of the groundwater, extensive temporary and permanent site dewatering will be required for the entire site; and

WHEREAS, the engineer's report further states that possible dewatering methods would include well points, deep wells, sumps and pumps, and that the dewatering must be evaluated to ensure that it will not adversely affect the structural stability and possible settlement of the adjacent buildings and the underground subway structure; and

WHEREAS, the applicant states that the shallow groundwater on the site makes the construction of a sub-cellar for additional parking cost prohibitive; and

WHEREAS, as to the location of the zoning district boundaries, the applicant states that the site is located within four separate zoning districts and while the majority of the site is located within commercial zoning districts, there is a 3,582 sq. ft. portion located at the northwest corner of the site, comprising approximately ten percent of the site, which is entirely within an R5 zoning district; and

WHEREAS, the applicant states that the site is also irregularly shaped, as the lot has three separate frontages with an irregular angle at the intersection of Queens Boulevard and Reeder Street, and the rear of the site includes a rectangular protrusion which results in the lot having a total of ten sides; and

WHEREAS, the applicant represents that the irregular shape of the site, and the location of the zoning district boundaries result in design constraints which contribute to the hardship of constructing an as-of-right building on the site; and

WHEREAS, the Board is not persuaded by the assertions of unnecessary hardship or practical difficulty caused by the zoning lot boundaries or the irregular shape of the site, and finds that the size of the lot, at 35,564 sq. ft., is large enough to compensate for such conditions; and

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WHEREAS, however, based upon the above, the Board finds that the location of the subway tunnel and the high water table are unique conditions which, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right scenario consisting of a three-story and mezzanine commercial building with 59,300 sq. ft. of rentable retail space and a total of 227 parking spaces with 117 below grade spaces and 110 above grade spaces; (2) an identical as-of-right scenario with the ground floor raised two feet above grade (and a corresponding decrease in the height of the cellar level); (3) an as-of-right retail scenario consisting of a four-story commercial building with 46,594 sq. ft. of rentable retail space and a total of 174 parking spaces, located above grade; and (4) the proposed two-story and mezzanine commercial building with retail (Use Group 6) at the first floor, a food store (Use Group 6) at the first floor mezzanine and second floor, and 111 accessory parking spaces (and 11 queuing spaces) in the cellar; and

WHEREAS, the applicant concluded that the proposed scenario was the only scenario of the four analyzed that would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze a lesser variance scenario consisting of the addition of 32 parking stackers to the accessory cellar level garage to increase the number of parking spaces provided at the site; and

WHEREAS, in response, the applicant provided a revised financial analysis which concluded that the lesser variance scenario would not realize a reasonable return because the introduction of 32 parking stackers and the need for additional ceiling height to accommodate the stackers significantly impacts the below grade sub-surface costs; and

WHEREAS, based upon its review of the submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed development will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the Board notes that the modified proposal only seeks to reduce the number of required parking spaces and to allow a portion of the accessory parking lot to be located within the R5 zoning district; and

WHEREAS, the applicant states that the proposed retail space and food store are located entirely within the commercial portion of the zoning lot and are permitted as-of-right, and that the cellar level accessory garage is permitted as-of-right on all but the 3,582 sq. ft. portion of the site located within an R5 zoning district, which only accounts for approximately ten percent of the total lot area; and

WHEREAS, the applicant further states that the proposed accessory parking garage within the R5 portion of the site will be located entirely below grade, and the R5 portion of the site

will consist of a landscaped area above grade; and

WHEREAS, accordingly, the applicant represents that the proposed use of the R5 portion of the site for below grade accessory commercial parking will not have any negative impacts on the surrounding neighborhood; and

WHEREAS, as to the reduction in parking, the applicant states that the proposed building provides sufficient parking to accommodate the anticipated parking demand at the site; and

WHEREAS, the applicant submitted a traffic study which concluded that the proposed building would require a total of 48 parking spaces during the weekday peak parking demand time periods and 99 parking spaces during the Saturday peak parking demand time periods, and therefore the 111 on-site parking spaces (and 11 queuing spaces) proposed for the site will be adequate to accommodate the parking demand for the proposal; and

WHEREAS, the applicant represents that parking demand will also be lessened because the site is well served by mass transit, as the Grand Avenue/Newtown stop on the M and R subway lines is located at the subject intersection, and both Queens Boulevard and Broadway are serviced by MTA bus routes; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as discussed above, the applicant initially requested a five-story commercial building with a floor area of 121,339 sq. ft. (3.41 FAR), a total height of 88 feet, and 251 accessory parking spaces, which complied with the required number of parking spaces under ZR § 36-21, but necessitated a use variance for the portion of the building located in the R5 district, and necessitated bulk waivers associated with floor area, lot coverage, front yard, side yard, rear yard, height, and parking located more than 23'-0" above curb level; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its plans on several occasions, ultimately providing the subject proposal significantly reducing the size of the building and eliminating the previously requested bulk waivers; and

WHEREAS, the Board directed the applicant to revise the applicant to eliminate the request for a reduction in the required number of parking spaces; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant

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information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10BSA050Q, dated March 29, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) reviewed the project for potential archaeological impacts and requested that an archaeological documentary study (Phase IA) be submitted for review and approval; and

WHEREAS, a Restrictive Declaration for an archaeological study was executed on March 16, 2012 and filed for recording on March 21, 2012; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located partially within a C1-2 (R6) zoning district, a C2-3 (R6) zoning district, a C1-2 (R7A) zoning district, and an R5 zoning district, a two-story and mezzanine commercial building with an accessory parking garage at the cellar level, which does not comply with the zoning regulations for use or parking, contrary to ZR §§ 22-00 and 36-21, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received November 1, 2011” – ten (10) sheets, and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 63,894 sq. ft. (1.80 FAR), a height of 48 feet, and 111 accessory parking spaces (and 11 queuing spaces) at the cellar level, as indicated on the BSA-approved plans;

THAT landscaping will be planted and maintained as per the BSA-approved plans;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction;

THAT substantial construction will proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 3, 2012.

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### 3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22<sup>nd</sup> Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, April 3, 2012.

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### 182-11-BZ

#### CEQR #12-BSA-044K

APPLICANT – Sheldon Lobel, P.C., for 775 Broadway Acquisition LLC c/o The Jackson Group LLC, owner; 777 Broadway Fitness Group, lessee.

SUBJECT – Application December 5, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-3 zoning district.

PREMISES AFFECTED – 777 Broadway, located on the east corner of the intersection formed by Broadway and Summer Place. Block 3131, Lot 6. Borough of Brooklyn.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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# MINUTES

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Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 15, 2011, acting on Department of Buildings Application No. 320371414, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in C4-3 zoning district pursuant to ZR Section 32-10 and therefore requires a special permit from the Board of Standards and Appeals as per ZR Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-3 zoning district, the operation of a physical culture establishment (PCE) on the first, second, and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 20, 2012, after due notice by publication in *The City Record*, and then to decision on April 3, 2012; and

WHEREAS, Community Board 4, Brooklyn, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east corner of the intersection formed by Broadway and Sumner Place, within a C4-3 zoning district; and

WHEREAS, the site is a corner lot with 75 feet of frontage on Broadway, 150 feet of frontage on Sumner Place, and a total lot area of 12,500 sq. ft.; and

WHEREAS, the applicant proposes to occupy 18,705 sq. ft. of floor area on the first, second, and third floors; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be 24 hours a day, seven days a week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the

community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA044K, dated December 1, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C4-3 zoning district, the operation of a physical culture establishment (PCE) on the first, second, and third floors of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 9, 2012” - (6) sheets, and *on further condition*:

THAT the term of this grant will expire on April 3, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

# MINUTES

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 3, 2012.

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## 197-11-BZ

### CEQR #12-BSA-060K

APPLICANT – Sheldon Lobel, P.C., for 329 Wyckoff Realty, LLC, owner; Wyckoff Fitness Group, LLC, lessee. SUBJECT – Application December 30, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on a portion of the first and second floors of an existing two-story building. C4-3 zoning districts.

PREMISES AFFECTED – 329 Wyckoff Avenue, northeast corner of the intersection formed by Wyckoff and Myrtle Avenues and Palmetto Street, Block 3444, Lot 33, Borough of Queens.

### COMMUNITY BOARD #5Q

#### APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 2, 2011, acting on Department of Buildings Application No. 420482524, reads in pertinent part:

Proposed physical culture establishment is not permitted as of right in C4-3 zoning district pursuant to ZR Section 32-10 and therefore requires a special permit from the Board of Standards and Appeals per ZR Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-3 zoning district, the operation of a physical culture establishment (PCE) at a portion of the first floor and the entire second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 28, 2012, after due notice by

publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 3, 2012; and

WHEREAS, Community Board 5, Queens, recommends approval of this application, with the condition that the site be kept free of graffiti; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the intersection formed by Wyckoff Avenue, Myrtle Avenue, and Palmetto Street, within a C4-3 zoning district; and

WHEREAS, the site has approximately 115 feet of frontage on Wyckoff Avenue, 14 feet of frontage on Myrtle Avenue, 123 feet of frontage on Palmetto Street, and a total lot area of 16,205 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story commercial building; and

WHEREAS, the proposed PCE will occupy a total of 17,385 sq. ft. of floor area on a portion of the first floor and the entire second floor; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant states that the proposed PCE will operate 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA060K, dated December 29, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

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# MINUTES

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Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-3 zoning district, the operation of a physical culture establishment at a portion of the first floor and the entire second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 14, 2012"-(4) sheets, and *on further condition*:

THAT the term of this grant will expire on April 3, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April

3, 2012.

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**93-11-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

APPEARANCES –

For Applicant: Moshe M. Friedman, Y. Kaufman, Jonathan Lowy and Soscher Weber.

For Opposition: Harry Thomasson, Rocco Mesiti, Dominick Colasanto, Thomas Colasanto, Louis Campanella, Alex Caperna and Steven Migliaccio.

For Administration: Anthony Scaduto of Fire Department.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for continued hearing.  
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**104-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 1:30 P.M., for adjourned hearing.  
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**107-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.

SUBJECT – Application August 3, 2011 – Variance (§72-21) to permit the enlargement of a synagogue (*Congregation Yeshiva Bais Yitzchok*) contrary to the bulk requirements for community facility buildings. R4-1 district.

PREMISES AFFECTED – 1643 East 21<sup>st</sup> Street, east side of 21<sup>st</sup> Street between Avenue O and P, Block 6768, Lot 84, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Jordan Most, Elly Kleinman and Philip Ort.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for continued hearing.



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# MINUTES

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**129-11-BZ**

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3<sup>rd</sup> Avenue. Block 447, Lot 43. Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 1:30 P.M., for deferred decision.

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**169-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011– Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14<sup>th</sup> Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to May 1, 2012, at 1:30 P.M., for continued hearing.

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**195-11-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.

SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2070 East 21<sup>st</sup> Street, west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 1, 2012 at 1:30 P.M., for decision, hearing closed.

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**22-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner.

SUBJECT – Application February 1, 2012 – Special Permit (§73-36) to allow the enlargement of an existing Physical Culture Establishment (*SoulCycle*).

PREMISES AFFECTED – 1470 Third Avenue, northwest corner of East 83<sup>rd</sup> Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 8, 2012 at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on March 20, 2012, under Calendar No. 158-11-BZ and printed in Volume 97, Bulletin Nos. 12-13, is hereby corrected to read as follows:

### 158-11-BZ

#### CEQR #12-BSA-030K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76' south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

#### COMMUNITY BOARD #14BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 26, 2011, acting on Department of Buildings Application No. 320243544, reads in pertinent part:

Proposed physical culture establishment in a C4-4A zoning district is contrary to Section 32-10 ZR and requires a special permit from the BSA (73-36 ZR); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4A zoning district, the operation of a physical culture establishment (PCE) at a portion of the first floor and the entire second and third floor of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2012, and then to decision on March 20, 2012; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is an irregular-shaped through lot bounded by Hillel Place to the north, Nostrand Avenue to the east, and Campus Road to the south, within a C4-4A zoning district; and

WHEREAS, the site has 31.2 feet of frontage on Hillel Place, 120 feet of frontage on Nostrand Avenue, 55.1 feet of

frontage on Campus Road, and a total lot area of 12,234 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story commercial building on the site, with the proposed PCE occupying 15,981 sq. ft. of floor area on a portion of the first floor and the entire second and third floors; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Saturday, from 5:30 a.m. to 11:00 p.m.; and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA030K, dated October 10, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

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*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4A zoning district, the operation of a physical culture establishment at a portion of the first floor and the entire second and third floors of a three-story commercial building, contrary to ZR §32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 11, 2011” - (4) sheets and “Received November 29, 2011” - (1) sheet, and *on further condition*:

THAT the term of this grant will expire on March 20, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 20, 2012.

**\*The resolution has been revised to correct the Plans Dates which read: ...“Received October 10, 2011-(4) sheets”... now reads: ...“October 11, 2011-(4) sheets”. Corrected in Bulletin No. 15, Vol. 97, dated April 11, 2012.**

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 97, Nos. 16-18

May 3, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

---

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180-11-A & 181-11-A	34-57 & 34-59 107 <sup>th</sup> Street, Queens

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**Affecting Calendar Numbers:**

120-11-BZ	52-11 29 <sup>th</sup> Street, Queens
167-11-BZ	1677 Bruckner Boulevard, Bronx
35-11-BZ	226-10 Francis Lewis Boulevard, Queens
102-11-BZ	131-23 31 <sup>st</sup> Avenue, Queens
112-11-BZ	2994/3018 Cropsey Avenue, Brooklyn
174-11-BZ	145-15 33 <sup>rd</sup> Avenue, Queens
176-11-BZ	150 Norfolk Street, Brooklyn
3-12-BZ	1913 East 28 <sup>th</sup> Street, Brooklyn
7-12-BZ	419 West 55 <sup>th</sup> Street, Manhattan
26-12-BZ	73-49 Grand Avenue, Queens

**Correction** .....283

**Affecting Calendar Numbers:**

47-11-BZ	1213 Bay 25 <sup>th</sup> Street, Queens
4-12-BZ	432-440 Park Avenue, Manhattan

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# DOCKET

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New Case Filed Up to April 24, 2012

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**78-12-BZ**

443 Park Avenue South, northeast corner of East 30th Street, Block 886, Lot(s) 1, Borough of **Manhattan, Community Board: 05**. Special Permit (§73-36) to permit the operation of a physical culture establishment. C6-4A zoning district. C6-4A district.

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**79-12-BZ**

1456 First Avenue, east side of First Avenue 50' south of corner of 76th Street, Block 1470, Lot(s) 1002, Borough of **Manhattan, Community Board: 08**. Special Permit (§73-36) to permit the operation of a physical culture establishment. C1-9 zoning district. C1-9 district.

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**80-12-BZ**

140 East 63rd Street, southeast corner of intersection of East 63rd Street and Lexington Avenue, Block 1397, Lot(s) 7505, Borough of **Manhattan, Community Board: 08**. Special Permit (§73-36) to permit the operation of a physical culture establishment. C1-8X and R8B zoning districts. C1-8X/R8B district.

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**81-12-BZ**

98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 33, Borough of **Queens, Community Board: 06**. Special Permit (§73-243) to permit the demolition and reconstruction of an eating and drinking establishment (Use Group 6) with an accessory drive-through and on-site parking. C1-3/R3-2/R3A district.

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**82-12-BZ**

2011 East 22nd Street, east side of East 22nd Street between Avenue S and Avenue T., Block 7301, Lot(s) 55, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family semi-detached home contrary to floor area, open space and lot coverage (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district. R3-2 district.

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**83-12-A**

653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot(s) 115, Borough of **Bronx, Community Board: 02**. Appeal from determination of Bronx Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C8-3 district.

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**84-12-A**

653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot(s) 115, Borough of **Bronx, Community Board: 02**. Appeal from determination of Bronx Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C8-3 district.

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**85-12-A**

50 East 153rd Street, boundy by Metro North and the Metro North Station; an off ramp to the Major Deegan Expressway, E. 157th Street, E. 153rd Street and the Bronx Terminal Market., Block 2539, Lot(s) 132, Borough of **Bronx, Community Board: 04**. Appeal from determination of Bronx Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-1 district.

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**86-12-BZ**

158 West 83rd Street, western boundary of the site is 150' east of Amsterdam Avenue on West 83rd Street., Block 1213, Lot(s) 58, Borough of **Manhattan, Community Board: 07**. Proposed enlargement would increase the building's floor area by 1,366' (4.9% increase above the underlying district regulations) pursuant to ZR §§73-03 & 73-63. The applicant does not propose to increase either the height of the proposed building (72.4 feet) of the overall number of units (22) from that which is permitted on as-of-right basis pursuant to the underlying R8B zoning district regulations. C2-5/R8B district.

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**87-12-BZ**

1720-28 Sheepshead Bay Road, 123.21' south of the intersection of Vorhies Avenue, Block 8770, Lot(s) 12, Borough of **Brooklyn, Community Board: 15**. This is an application for a new special permit, pursuant to Z.R. §73-36 to permit the continued operation by Bally's Total Fitness of the existing physical culture establishment (PCE) at this site. The existing PCE expired on May 5, 2007 and this application seeks to re-establish the PCE at this location. C2-2/R4 district.

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**88-12-A**

462 11th Avenue, 11th Avenue between 37th and 38th Street., Block 709, Lot(s) 3, Borough of **Manhattan, Community Board: 04**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C6-4 district.

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# DOCKET

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**89-12-A**

462 11th Avenue, 11th Avenue between 37th and 38th Street., Block 709, Lot(s) 3, Borough of **Manhattan, Community Board: 04**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C6-4 district.

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**90-12-A**

111 Varick Street, Varick Street between Broome and Dominick Street., Block 578, Lot(s) 71, Borough of **Manhattan, Community Board: 02**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-6 district.

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**91-12-BZ**

846 Gerard Avenue, East side of Gerard Avenue, 132.37' south of East 161st Street., Block 2474, Lot(s) 35, Borough of **Bronx, Community Board: 04**. Extension the terms of the variance granted under BSA Cal. No. 1003-48-BZ and legalize one story extension for a 1 story commercial building with a total floor area of 4,316.44 square feet. R8 district.

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**92-12-A**

571 Riverside Drive, East side of Riverside Drive between 134th and 135th Streets., Block 2001, Lot(s) 1, Borough of **Manhattan, Community Board: 02**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C6-2/MMU district.

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**93-12-A**

571 Riverside Drive, East side of Riverside Drive between 134th and 135th Street., Block 2001, Lot(s) 1, Borough of **Manhattan, Community Board: 02**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C6-2/MMU district.

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**94-12-A**

571 Riverside Drive, East side of Riverside Drive between 134th and 135th Street, Block 2001, Lot(s) 1, Borough of **Manhattan, Community Board: 2**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district. C6-2/MMU zoning district. C6-2/MMU district.

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**95-12-A**

2284 Twelfth Avenue, west side of Twelfth Avenue between 125th Street and 131st Street., Block 2004, Lot(s) 40, Borough of **Manhattan, Community Board: 9**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-2 district.

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**96-12-A**

2284 Twelfth Avenue, west side of Twelfth Avenue between 125th Street and 131st Street., Block 2004, Lot(s) 40, Borough of **Manhattan, Community Board: 9**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-2 district.

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**97-12-A**

620 12th Avenue, East side of 12th Avenue, between 47th and 48th Streets., Block 1095, Lot(s) 11, Borough of **Manhattan, Community Board: 04**. Appeal from determination of Manhattan Borough Commissioner of Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL district.

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**98-12-A**

620 12th Avenue, East side of 12th Avenue, between 47th and 48th Streets, Block 1095, Lot(s) 11, Borough of **Manhattan, Community Board: 04**. Appeal from determination of Manhattan Borough Commissioner of Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL district.

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**99-12-A**

393 Canal Street, intersection of Canal, Laight Street and Avenue of the Americas., Block 227, Lot(s) 7, Borough of **Manhattan, Community Board: 2**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5B district.

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**100-12-A**

393 Canal Street, intersection of Canal, Laight Street and Avenue of the Americas, Block 227, Lot(s) 7, Borough of **Manhattan, Community Board: 2**. Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5B district.

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# DOCKET

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## 101-12-A

13-17 Laight Street, south side of Laight Street between Varick Street and St. John's Lane., Block 212, Lot(s) 18, Borough of **Manhattan, Community Board: 1**. Appeal from determination of Manhattan Borough Commission of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5 district.

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## 102-12-A

489 Sea Breeze Walk, East side of Sea Breeze Walk, 100.2" north of Oceanside Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. The street giving access to the existing building to be replaced is not duly placed on the map of the City of N.Y. contrary to Art. 3 Sec.36 G.C.L. the existing building to be replaced does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code. The proposed upgrade of the private disposal system is contrary to the DOB policy. R4 district.

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## 103-12-A

74-76 Adelphi Street, located on the west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street., Block 2044, Lot(s) 52,53, Borough of **Brooklyn, Community Board: 2**. Common law vested rights application to restore permits issued prior to July 25, 2007 and authorize DOB to issue all related and relevant permits in connection with the proposed project at the site. 5RB district.

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## 104-12-BZ

178-21 -179-19 Hillside Avenue, north side of Hillside Avenue between 178th Street and Midland Parkway, Block 9937, Lot(s) 60, Borough of **Queens, Community Board: 8**. Application is filed pursuant to ZR§11-411 seeking to reinstate and extend the term of the variance that permits accessory retail parking on the R5 portion of a zoning lot that is split by district boundaries. The application also requests an extension of time to obtain a Certificate of Occupancy and a waiver of the Board's Rules of Practice and Procedure. C2-4/R6A and R5 district.

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## 105-12-BZ

450 Castle Hill Avenue, southeast corner of Castle Hill and Lacombe Avenues., Block 3511, Lot(s) 30, Borough of **Bronx, Community Board: 9**. Facility is 21,340 sf two story plus basement community facility operating with day care and adult day hab programs operated by the not-for-profit organization Leake and Watts services Inc. Proposal is to allow a new elevator for ADA compliance. R-5 district.

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## 106-12-BZ

2102 Jerome Avenue, east side of Jerome Avenue between East Burnside Avenue and East 181st Street., Block 3179, Lot(s) 20, Borough of **Bronx, Community Board: 5**. The application is filed pursuant to Z.R. § 73-50 and requests a special permit to allow for the development of a new one-story Use Group 6 retail store. The special permit is required because the proposed building is situated at the eastern lot line of the premises, and thus does not comply with the requirement of ZR§33-292 for a 30 foot rear for a zoning lot in a C8 district along a district boundary coincident with a residential zoning district. C8-3 district.

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## 107-12-BZ

600/18 Third Avenue, west side of 3rd Avenue between E. 39th Street and E. 40th Street., Block 895, Lot(s) 45, Borough of **Manhattan, Community Board: 6**. Special Permit to allow physical culture establishment within existing commercial building. C5-3,C5-2.5,R8B district.

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## 108-12-A

46-12 Third Avenue, west side of Third Avenue between 46th Street and 47th Street., Block 185, Lot(s) 25, Borough of **Brooklyn, Community Board: 07**. Appeal from Department of Buildings' determinations that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R.§§42-58 and 52-61. M1-2D district.

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## 109-12-A

46-12 Third Avenue, west side of Third Avenue between 46th Street and 47th Street., Block 185, Lot(s) 25, Borough of **Brooklyn, Community Board: 07**. Appeal from Department of Buildings' determinations that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R. §§42-58 and 52-61. M1-2D district.

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## 110-12-A

100 Varick Street, East side of Varick Street between Broome and Watts Streets., Block 477, Lot(s) 35,42, 44 & 76, Borough of **Manhattan, Community Board: 2**. This application seeks a variance of §§26(7) and 30 of the MDL (pursuant to Section 310 of the MDL) to facilitate the construction of a new, 14-story residential building with ground floor retail in an M1-6 district. M1-6 district.

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## 111-12-BZ

60 New Street, 54-68 Broad Street; 52-66 New Street; north of Beaver Street., Block 24, Lot(s) 1, Borough of **Manhattan, Community Board: 1**. Special Permit application pursuant to Z.R.§73-36 to permit the proposed physical culture establishment at a portion of the ground



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# DOCKET

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floor of the premises which is located within a C5-5(LM) zoning district. C5-5(LM) district.

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**112-12-BZ**

244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue., Block 444, Lot(s) 15, Borough of **Staten Island, Community Board: 1**. Application for special permit to allow enlargement of existing one-family dwelling that will decrease the open space ratio, but will not decrease the ratio to less than 90 percent of that which is required in the underlying R2 zoning district. R2 district.

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**113-12-BZ**

32-05 Parsons Boulevard, northeast corner of Parsons Boulevard and 32nd Avenue., Block 4789, Lot(s) 14, Borough of **Queens, Community Board: 7**. Variance under ZR 72-21 to permit parapet wall to exceed 42", and resulting front wall height and related structure contrary to ZR24-521 and ZR24-51. R2A district.

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**114-12-A**

24-59 32nd street, 32nd Street at Grand Central Parkway Service Road, Block 837, Lot(s) 95, Borough of **Queens, Community Board: .** Pre-existing advertising sign district.

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**115-12-BZ**

701/745 64th Street, Seventh and Eighth Avenues, Block 5794, Lot(s) 150&165, Borough of **Brooklyn, Community Board: 10**. Proposed reduction in the number of accessory off-street parking spaces required by ZR §36-21 for uses in parking requirements category B1 in use Use Group 6. C4-2A district.

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**116-12-BZ**

1477 Third Avenue, Thrid Avenue between E. 83rd Street and e 84th Streets., Block 1529, Lot(s) A, Borough of **Manhattan, Community Board: 8**. Application for legalization of an existing PCE under ZR§73-36 requires BSA approval. C1-9 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**MAY 8, 2012, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 8, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**534-65-BZ**

APPLICATION – Alfonso Duarte for Parker Yellowstone, owner.

SUBJECT – Application March 9, 2012 – Extension of Term permitting surplus tenant parking spaces, within an accessory garage, for transient parking pursuant to §60 (3) of the Multiple Dwelling Law (MDL), which expired on July 13, 2010; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 104-40 Queens Boulevard, northeast corner Yellowstone Boulevard. Block 3175, Lot 1. Borough of Queens.

**COMMUNITY BOARD #6Q**  
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**749-65-BZ**

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application April 9, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) which expired on March 8, 2012.

PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

**COMMUNITY BOARD #2SI**  
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**339-04-BZ**

APPLICATION – Eric Palatnik, P.C., for Kramer and Wurtz, Inc., owner.

SUBJECT – Application January 17, 2012 – Extension of Term (§11-411) of a previously variance which permits an automotive service station (UG 16B) which expires on June 4, 2012. R3-1 zoning district.

PREMISES AFFECTED – 157-30 Willets Point Boulevard, south side of the intersection formed by Willets Point Boulevard and Clintonville Street. Block 4860, Lot 15. Borough of Queens.

**COMMUNITY BOARD #7Q**  
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**32-12-A**

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative Inc., owner; Noreen & William Goodwin, lessees.

SUBJECT – Application February 8, 2012 – The proposed reconstruction and enlargement of the existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade to the existing private disposal system located partially in the bed of the service road is contrary to Building Department policy.

PREMISES AFFECTED – 110 Beach 220<sup>th</sup> Street, west side Beach 220<sup>th</sup> Street, 160' south of Breezy Point Boulevard, Block 16350, Lot p/o400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**51-12-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Patricia Davey, lessee.

SUBJECT – Application March 7, 2012 – The proposed reconstruction of the existing building is located on a site where the building lies partially in the bed of a mapped Beach 216 Street as per Article 3, Section 35 of the General City Law and contrary to the Department of Building policy. The proposed upgrade of the private disposal system is not located in the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 46 Tioga Walk, east of Beach 216<sup>th</sup> Street, 45' north of 6<sup>th</sup> Avenue, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**52-12-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Michael Mullaly, lessee.

SUBJECT – Application March 7, 2012 – The proposed reconstruction of the existing building is located on a site where the building lies in the bed of a mapped street as per Art 3 Sect. 35 of the GCL, is not fronting a mapped street as per Art 3 Sect. 36 GCL and contrary to the Department of Buildings policy. The proposed upgrade of the private disposal system is located in the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 35 Janet Lane, north of Janet Lane, east of Beach 203<sup>rd</sup> Street, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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# CALENDAR

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**MAY 8, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 8, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **42-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), height (§23-631). R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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### **117-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (ZR §72-21) to permit the development of a new athletic center (*Sisters of St. Joseph Athletic Center*) building accessory to an existing Use Group 3 school. R1-2 & R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

**COMMUNITY BOARD # 8Q**

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### **5-12-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Aaron Herzog, owner.

SUBJECT – Application January 12, 2012 – Variance (§72-21) for the addition of a third floor to an existing two family residential building which is contrary to front yard requirements ZR §23-146(c) front yards and side yard requirement ZR §23-146(d). R5 Borough Park zoning district.

PREMISES AFFECTED – 812 Dahill road, northwest corner of Dahill Road and 19<sup>th</sup> Avenue, Block 5445, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### **8-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Gladys Mandalaoui and Solomon Mandalaoui, owners.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR §23-141); side yards (§23-461) and less than the required rear yard (§23-47); R4 zoning district in the Special Ocean Parkway District.

PREMISES AFFECTED – 705 Gravesend Neck Road, north side of Gravesend Neck Road, between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, block 7159, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **44-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for 952-1064 Flatbush Avenue ELB LLC, owner; 1024 Flatbush Avenue Fitness Group, LLC, lessee.

SUBJECT – Application February 23, 2012 – Application filed pursuant to ZR§73-36 seeking a special permit to allow the operation of a physical culture establishment (*Flatbush Fitness Group*) within an existing four-story building that is located in a C4-4A zoning district.

PREMISES AFFECTED – 1024 Flatbush Avenue, west side of Flatbush Avenue between Regent Place and Beverly Road, Block 5125, Lot 56, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, APRIL 24, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**389-37-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for  
Rosemarie Fiore and George Fiore.

SUBJECT – Application February 22, 2012 – Extension of  
Time to obtain a Certificate of Occupancy of previously  
granted variance for the operation of a UG8 parking lot  
which expired on May 11, 2011; waiver of the Rules.  
R5/C1-2 zoning district.

PREMISES AFFECTED – 31-08 to 31-12 45<sup>th</sup> Street,  
southwest corner of 45<sup>th</sup> Street and 31<sup>st</sup> Avenue, Block 710,  
Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Application granted on  
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of time to obtain a certificate of occupancy for a  
previously granted variance for the operation of a Use  
Group 8 parking lot; and

WHEREAS, a public hearing was held on this  
application on March 27, 2012, after due notice by  
publication in *The City Record*, and then to decision on April  
24, 2012; and

WHEREAS, the premises and surrounding area had a  
site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located on the southwest  
corner of 45<sup>th</sup> Street and 31<sup>st</sup> Avenue, within a C1-2 (R5)  
zoning district; and

WHEREAS, the site is occupied by an open parking lot;  
and

WHEREAS, the Board has exercised jurisdiction over  
the site since April 5, 1938 when, under the subject calendar  
number, the Board granted a variance to permit the parking and  
storage of more than five motor vehicles on the site, for a term  
of two years; and

WHEREAS, subsequently, the grant was amended and  
the term extended at various times; and

WHEREAS, most recently, on May 11, 2010, the Board

granted a ten-year extension of term, to expire on June 13,  
2018 and an amendment to remove the condition requiring a  
financial analysis examining the feasibility of residential use at  
the site; a condition of the grant was that a certificate of  
occupancy be obtained by May 11, 2011; and

WHEREAS, the applicant now seeks an additional  
extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that it was unable to  
obtain a certificate of occupancy within the stipulated time in  
part due to procedural issues at the Department of Buildings;  
and

WHEREAS, based upon the above, the Board finds  
that the requested extension of time to obtain a certificate of  
occupancy is appropriate with certain conditions as set forth  
below.

*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*  
and *amends* the resolution, dated April 5, 1938, so that as  
amended this portion of the resolution shall read: “to extend  
the time to obtain a certificate of occupancy to April 24,  
2013; *on condition* that the use and operation of the site shall  
comply with the BSA-approved plans associated with the  
prior grant; and *on further condition*:

THAT the term of the grant shall expire on June 13,  
2018;

THAT the site shall be maintained free of debris and  
graffiti;

THAT the above conditions shall appear on the  
certificate of occupancy;

THAT a new certificate of occupancy shall be obtained  
by April 24, 2013;

THAT all conditions from prior resolution not  
specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 410230245)

Adopted by the Board of Standards and Appeals April  
24, 2012.

**764-56-BZ**

APPLICANT – Alfonso Duarte, P.E., for Anthony Panvini,  
owner.

SUBJECT – Application December 2, 2011 – Extension of  
Term (§11-411) of a variance permitting the operation of an  
automotive service station (UG 16B) with accessory uses  
and the sale of used cars (UG 16B), which expires on  
October 22, 2012. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding  
Expressway, north side between Hollis Ct., Boulevard and  
201<sup>st</sup> Street, Block 741, Lot 325,000.00, Borough of  
Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Alfonso Duarte.

# MINUTES

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted variance to permit the operation of a gasoline service station with accessory uses and the sale of cars, which will expire on October 22, 2012; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) there be no parking on the sidewalk; (2) the site be maintained free of debris and graffiti; (3) all graffiti be removed within 48 hours; (4) all signs be maintained in accordance with the BSA-approved plans; (5) the sale of only five used cars be permitted; (6) all conditions appear on the certificate of occupancy; and (7) a new certificate of occupancy be obtained within one year from the date of the grant; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, subject to the conditions stipulated by the Community Board; and

WHEREAS, the subject site is located on a corner through lot bounded by 201<sup>st</sup> Street to the east, the Horace Harding Expressway to the south, and Hollis Court Boulevard to the west, within a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 17, 2002, the Board granted a ten-year extension of term, which expires on October 22, 2012, and an amendment to permit the sale of used cars; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the site’s compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted revised plans and a signage analysis reflecting that the site complies with C1 district signage regulations; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated October 22, 1957, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 22, 2012, to expire on October 22, 2022; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received January 31, 2012’- (2) sheets and ‘April 3, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on October 22, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT any graffiti identified on the site will be removed within 48 hours;

THAT all signage on the site will comply with C1 district regulations;

THAT a maximum of five parking spaces on the site be utilized for the sale of used cars;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by April 24, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals April 24, 2012.

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## **636-70-BZ**

**APPLICANT** – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Kings 108 Car Care, Inc. (Mobile S/S), lessee.

**SUBJECT** – Application January 24, 2012 – Amendment to an approved Special Permit (§73-211) for the operation of an automotive service station (UG 16B) with accessory uses. C2-2/R6 zoning district.

**PREMISES AFFECTED** – 105-45 to 105-55 Horace Harding Expressway, northwest corner 108<sup>th</sup> Street, Block 1694, Lot 23. Borough of Queens.

## **COMMUNITY BOARD #4Q**

**APPEARANCES** –

For Applicant: Chetran Budhu.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

# MINUTES

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for an automotive service station with accessory uses (Use Group 16); and

WHEREAS, a public hearing was held on this application on February 28, 2012 after due notice by publication in *The City Record*, with a continued hearing on March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, states that it has no objection to this application; and

WHEREAS, the site is located on a corner through lot bounded by Horace Harding Expressway to the south, Granger Street to the west, and 108<sup>th</sup> Street to the east, within a C2-2 (R6) zoning district; and

WHEREAS, the subject site is occupied by an automotive service station with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 2, 1971 when, under the subject calendar number, the Board granted a special permit to allow the reconstruction of an existing automotive service station with accessory uses; and

WHEREAS, subsequently, the grant was amended by the Board on various occasions; and

WHEREAS, most recently, on March 23, 1999, the Board granted an amendment to permit the conversion of an existing building to a convenience store, the removal of two existing pump islands to be replaced with five new pump islands and canopy, and the discontinuance of the automotive repair use; and

WHEREAS, the applicant states that the owner did not pursue the modifications permitted under the 1999 grant, and now requests an amendment to allow the site to revert to its use and operation prior to the 1999 grant; and

WHEREAS, at hearing, the Board directed the applicant to clarify how the site operates and whether it is in compliance with the conditions from prior grants; and

WHEREAS, in response, the applicant submitted an operation plan reflecting that the site consists of a gasoline service station and snack shop which operate 24 hours per day, and an automotive repair shop which operates Monday through Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 5:00 p.m., and closed on Sunday; and

WHEREAS, the applicant also submitted compliance charts reflecting that the site is in compliance with all relevant conditions from prior Board grants; and

WHEREAS, at hearing, the Board also questioned whether the applicant could eliminate any of the curb cuts on the site; and

WHEREAS, in response, the applicant submitted a circulation plan and states that in order to move vehicles safely and quickly off the site so that on-site congestion can be avoided, it is necessary to dedicate one of the Horace Harding Expressway curb cuts exclusively for exiting

traffic, and that if the owner had to eliminate one of the five curb cuts on the site it might not be able to dedicate one curb cut solely for egress; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 2, 1971, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received January 24, 2012’–(6) sheets; and *on further condition*:

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 420344130)

Adopted by the Board of Standards and Appeals April 24, 2012.

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## 172-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Clearview Mortgage Bank Corporation, owner.

SUBJECT – Application November 4, 2011 – Extension of Term of an approved Variance (§72-21) which permitted the construction of a two-story UG6 professional office building which expires on March 31, 2012. R2 zoning district.

PREMISES AFFECTED – 256-10 Union Turnpike, south side of Union Turnpike between 256<sup>th</sup> and 257<sup>th</sup> Streets, Block 8693, Lot 14, Borough of Queens.

## COMMUNITY BOARD #13Q

### APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for the construction of a two-story professional office building (Use Group 6); and

WHEREAS, a public hearing was held on this application on February 28, 2012, after due notice by

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publication in *The City Record*, with a continued hearing on March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, Community Board 13, Queens, states that it has no objection to this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Union Turnpike, between 256<sup>th</sup> Street and 257<sup>th</sup> Street, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since March 31, 1987 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story professional office building (Use Group 6) within an R2 zoning district, for a term of 15 years; and

WHEREAS, on January 7, 2003, the Board granted a ten-year extension of term, which expired on March 31, 2012; and

WHEREAS, the applicant now seeks an additional ten-year extension of the term; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complies with C1 district regulations; and

WHEREAS, in response, the applicant submitted a signage analysis which reflects that the signage on the site complies with C1 district regulations and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 31, 1987, so that as amended this portion of the resolution shall read: "to extend the term for ten years from March 31, 2012, to expire on March 31, 2022; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'Received November 4, 2011'-(5) sheets and 'April 10, 2012'-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on March 31, 2022;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB App. No. 400227447)

Adopted by the Board of Standards and Appeals April 24, 2012.

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## 162-95-BZ & 163-95-BZ

APPLICANT – Sheldon Lobel, P.C., for Salvatore Bonavita, owner; Pelham Bay Fitness Group, LLC, lessee.

SUBJECT – Application April 3, 2011 – Extension of Term to permit the continued operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on July 30, 2006; Amendment to increase the floor area of the establishment. Waiver of the rules. C2-4/R6 and R7-1 zoning district.

PREMISES AFFECTED – 3060 & 3074 Westchester Avenue, Southern side of Westchester Avenue between Mahan Avenue and Hobart Avenue. Block 4196, Lots 9, 11 & 13, Borough of Bronx.

## COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of previously granted special permits for a physical culture establishment ("PCE"), which expired on July 30, 2006, and an amendment to legalize the extension of the PCE space; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Bronx, raised concerns with parking at the site and the proposed 24-hour operation of the PCE, and recommends approval of this application, on condition that (1) there be accessory off-street attendant parking for 25 motor vehicles; and (2) the hours of operation be limited to 6:00 a.m. to midnight, seven days per week; and

WHEREAS, the PCE is located on the southeast side of Westchester Avenue, between Mahan Avenue and Hobart Avenue, partially within a C2-4 (R6) zoning district and partially within a C2-4 (R7-1) zoning district; and

WHEREAS, the site comprises three separate tax lots (Lots, 9, 11, and 13) occupied by two adjoining one-story and mezzanine commercial buildings; the 3060 Westchester Avenue building is located on Lot 9, and the 3074 Westchester Avenue building is located on Lot 11 and a portion of Lot 13; and

WHEREAS, the applicant states that the buildings have an opening between them and the subject PCE operates in both buildings; and

WHEREAS, the PCE currently occupies a combined

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total of 17,212 sq. ft. of floor area on the first floors and mezzanines of the two buildings (8,551 sq. ft. of floor area in the 3060 Westchester Avenue building and 8,661 sq. ft. of floor area in the 3074 Westchester Avenue building); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 30, 1996 when, under the subject calendar numbers, the Board granted special permits for a PCE in the subject buildings for a term of ten years, which expired on July 30, 2006; and

WHEREAS, the applicant now seeks to extend the term of the special permits for an additional ten years; and

WHEREAS, the applicant also requests an amendment to legalize the extension of the PCE space within the 3060 Westchester Avenue building (BSA Cal. No. 162-95-BZ); and

WHEREAS, the applicant states that at the time of the Board's original approval, the southeast corner of the first floor and the corridor along the western wall of the 3060 Westchester Avenue building were used by the PCE's owners as an office (Use Group 6) and the mezzanine space directly above the office area was unused, such that the total combined floor area of the PCE was 14,334 sq. ft.; and

WHEREAS, the applicant now seeks to legalize the conversion of the first floor office area and unused mezzanine area in the 3060 Westchester Avenue building to PCE use, accounting for approximately 2,900 sq. ft. of additional PCE floor area, for a combined total floor area of 17,212 sq. ft.; and

WHEREAS, the applicant notes that the PCE now operates as Planet Fitness (formerly Gold's Gym) but that the owner and operator of the PCE has not changed; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant states that it provides an attended parking lot for the PCE's patrons with a maximum capacity of 25 vehicles, and states that it will station the parking attendant outdoors in the parking lot during the PCE's peak hours of operation, in order to maneuver vehicles as needed in the lot; and

WHEREAS, as to the Community Board's concerns regarding the proposed 24-hour operation of the PCE, the applicant states that the owners of the subject PCE have been operating at this site since 1996 and have maintained the current 24-hour operation at this location since 2001, and that the PCE's hours of operation have not altered the character of the neighborhood; and

WHEREAS, the applicant notes that a 24-hour automotive service station is located directly across Westchester Avenue from the site, and unlike the automotive service station, the PCE is located entirely within an enclosed building; and

WHEREAS, the applicant acknowledges that past noise complaints at the site resulted from the loitering of patrons in the parking lot during the overnight hours, but states that the PCE has taken the following measures to address these concerns: (1) installed signs in the parking area and building advising members to be respectful of their neighbors when arriving and leaving the PCE; (2) instructed the staff to monitor the parking area and street in front of the building to ensure patrons are not loitering before or after using the PCE; (3) installed security cameras in the parking area to enable staff to

better monitor the lot; (4) instituted a policy where PCE membership is subject to revocation if members create noise problems for the neighbors; and (5) instructed staff to document and refer any complaints from neighbors to the attention of the PCE's Director of Operations, who has attended Community Board meetings and provided personal contact information to the Community Board members and residents; and

WHEREAS, in order to prevent the PCE's hours of operation from adversely affecting the adjoining residential neighbors, the applicant has also agreed to close the PCE's parking lot from the hours of 12:00 a.m. through 6:00 a.m.; and

WHEREAS, the applicant submitted revised plans reflecting the installation of a gate at the parking lot's entrance, which the applicant states will be closed by the PCE's staff during the overnight hours; and

WHEREAS, accordingly, the Board finds that the applicant has submitted sufficient evidence to establish that the proposed 24-hour operation of the PCE will not have a negative impact on the surrounding neighborhood, but the Board will limit the term to two years in order to monitor the effectiveness of the PCE's operating conditions designed to address the concerns raised by the community; and

WHEREAS, based upon its review of the record, the Board finds that a two-year 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on July 30, 1996, so that as amended this portion of the resolution shall read: "to extend the term for a period of two years from the date of this grant, to expire on April 24, 2014, and to permit the noted modifications to the BSA-approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 10, 2012"--(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 24, 2014;

THAT accessory off-street attendant parking for 25 motor vehicles will be provided on the site;

THAT the parking lot will be closed between the hours of 12:00 a.m. and 6:00 a.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 101962814)

Adopted by the Board of Standards and Appeals, April 24, 2012.



# MINUTES

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**442-42-BZ**

APPLICANT – Eric Palatnik, P.C., for Cropsey-20th Avenue Corp, owner.

SUBJECT – Application November 17, 2011 – Amendment (§11-412) to enlarge an existing gasoline service station (*Shell*) and legalize the conversion of repair bays to an accessory convenience store. R-5 zoning district.

PREMISES AFFECTED – 2001/2011 Cropsey Avenue, northeast corner of 20<sup>th</sup> Avenue and Cropsey Avenue, Block 6442, Lot 5, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for decision, hearing closed.

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**196-49-BZ**

APPLICANT – Walter T. Gorman, P.E., for 1280 Allerton Avenue Realty Corp., owner; Don-Glo Auto Service Center, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of an approved variance for the continued operation of a gasoline service station (*Sunoco*) which expired on September 30, 2005; Amendment for the addition of a lift in the service building and an air tower and car vacuum on the site. R4 zoning district.

PREMISES AFFECTED – 1280 Allerton Avenue, south west corner of Wilson Avenue. Block 4468, Lot 43. Borough of Bronx.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Chetran Budhu.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for continued hearing.

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**188-78-BZ**

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Amendment (§11-413) to a previously granted Variance (§72-21) to add (UG16) automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81<sup>st</sup> Street, Block 6313, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for decision, hearing closed.

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**1259-79-BZ**

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> Street, LLC c/o Madison Realty Capital, L.P., owner.

SUBJECT – Application December 15, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) to convert the fourth and sixth floors of an existing building from manufacturing lofts to residential use which expired on April 27, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 27, 2011; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, north side of West 26<sup>th</sup> Street, 350' east of 6<sup>th</sup> Avenue, Block 828, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for decision, hearing closed.

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**271-90-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED –68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 6, 2012, at 10 A.M., for continued hearing.

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**290-06-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application February 2, 2012 – Amendment of an approved variance (§72-21) for a new residential building with ground floor commercial, contrary to use regulations.

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The amendment requests an increase in commercial floor area and a decrease in the residential floor area. M1-5B zoning district

PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for decision, hearing closed.

## 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.  
SUBJECT – Application December 30, 2011 – Amendment to a previous variance (§72-21) which allowed for the construction of a mixed use building, contrary to floor area an open space regulations. The amendment requests changes to the interior layout which would decrease medical office space, increase the number of dwelling units from 28 to 36, and increase parking from 58 to 61 spaces. R6/C2-2 zoning district.

PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 8, 2012, at 10 A.M., for decision, hearing closed.

## 248-08-BZ

APPLICANT – New York City Board of Standards  
OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

SUBJECT – Application October 6, 2008 – Dismissal for Lack of Prosecution –Variance (§72-21) to permit the development of a religious-based school and church, contrary to floor area and floor area ratio (§24-11), rear yard (§24-36), and parking (§25-31). R5 zoning district.

PREMISES AFFECTED – 3550 Eastchester Road, eastern side of Eastchester Road between Hicks Street and Needham Avenue, Block 4726, Lot 7, 36, 38, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Off calendar.

## APPEALS CALENDAR

### 206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

**ACTION OF THE BOARD** – Applications granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated February 13, 2012, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966 read in pertinent part:

Proposed construction of a one family residence building within bed of a mapped street is contrary to General City Law 35 and not permitted; and

WHEREAS, this is an application to permit the proposed construction of five single-family homes located within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in the *City Record*, with continued hearings on February 28, 2012 and March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, New York State Assembly Member Michael J. Cusick provided written testimony in opposition to this application; and

WHEREAS, New York State Assembly Member Louis R. Tobacco provided written testimony in opposition to this application; and

WHEREAS, New York State Senator Andrew J. Lanza provided written testimony requesting that the Board review the environmental and transportation issues associated with this application; and

WHEREAS, United States Congress Member Michael G. Grimm provided written testimony in opposition to this

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application; and

WHEREAS, New Yorkers for Parks provided written testimony in opposition to this application; and

WHEREAS, representatives of the Richmondtown and Clarke Avenue Civic Association and the Grasmere Civic Association provided oral and written testimony in opposition to this application (collectively, the "Opposition"); and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposal is in a freshwater wetlands area; (2) an environmental assessment should be performed on the site; (3) the proposal could cause increased flooding in the area; (4) the applicant has not satisfied the findings pursuant to ZR § 72-21; (5) the proposal creates potential zoning non-compliances; (6) the proposal must be reviewed by the Department of City Planning ("DCP"); and (7) there is insufficient parking for the project on the surrounding streets; and

WHEREAS, the subject site consists of 296,208 sq. ft. of lot area bounded by St. Andrews Road to the north and Richmond Road to the south, in an R1-2 zoning district within the Special Natural Area Zoning District; and

WHEREAS, the applicant notes that 59,520 sq. ft. of lot area is Freshwater Wetland, 157,135 sq. ft. of lot area is Freshwater Wetland Adjacent Area, and the remaining 79,533 sq. ft. of lot area is unregulated; and

WHEREAS, the applicant proposes to construct 13 single family homes on the site, with four of the homes fronting on Richmond Road and nine of the homes accessed by Tupelo Court, a newly created private street; and

WHEREAS, the applicant states that three of the homes are proposed to be constructed in the bed of a mapped street known as Mace Street, and two of the homes are proposed to be constructed in the bed of a mapped street known as Ascot Avenue; accordingly, the applicant seeks a waiver of Section 35 of the General City law for the construction of five homes in the bed of a mapped street; and

WHEREAS, the other eight homes in the proposed development do not require a waiver of Section 35 of the General City Law, and therefore are not included in the subject application; and

WHEREAS, by letter dated January 12, 2011, the Department of Transportation ("DOT") states that it has reviewed the project and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, by letter dated September 26, 2011, the Department of Environmental Protection ("DEP") states that the Amended Drainage Plan No. D-3 (R-2)/D-4 (R-1), dated March 17, 2005, does not show any future sewers in the portions of mapped Mace Street and mapped Ascot Avenue at issue, but does show stabilized outlets at the intersection of Mace Street and mapped Call Street which will discharge storm flow into the referenced property; and

WHEREAS, DEP further states that, based on the June 28, 2011 map submitted by the applicant, which shows the DEP easement area which will be available to accept the storm flow discharge from the above-mentioned stabilized outlets, and based on the easement document submitted by the applicant for the portion of the property not to be developed on

lot 36, it has no objections to the proposed application; and

WHEREAS, by letter dated December 7, 2010, the Fire Department states that it objects to the construction of any buildings within the bed of a mapped street (including the construction of the proposed homes in the bed of Ascot Avenue and Mace Street) because such streets should be opened in order to improve emergency response in the area; and

WHEREAS, in response, the applicant states that it made a good faith attempt to utilize and open the existing mapped but unbuilt streets on the site, however, the New York State Department of Environmental Conservation ("DEC") would not allow the existing streets on the site to be opened because they are within Freshwater Wetland and Freshwater Wetland Adjacent Area; and

WHEREAS, the applicant submitted a letter from DEC dated March 20, 2012 which states that it issued a freshwater wetlands permit for the construction of 13 single family homes on the site, which keeps portions of the beds of St. Andrews Road, Mace Street, and Ascot Avenue unbuilt in perpetuity to preserve and protect freshwater wetlands and their benefits, and the street beds will not be opened and developed on the property controlled by the terms of the cited DEC permit; and

WHEREAS, by letter dated March 6, 2012, the Fire Department states that it reviewed the proposed site plan and all conditions relative to building access roads are in compliance with the 2008 Fire Code; and

WHEREAS, accordingly, the Board acknowledges the stated policy of the Fire Department that all mapped streets be opened, but finds that the applicant has submitted sufficient evidence to warrant approval of the proposed construction based on the inability to open the mapped but unbuilt streets on the site due to the requirements of the DEC freshwater wetlands permit, in conjunction with the Fire Department's acknowledgment that the proposed Tupelo Court will fully comply with the 2008 Fire Code; and

WHEREAS, in response to the concerns raised by the Opposition regarding the construction within the Freshwater Wetlands, flooding, and the need to undergo an environmental assessment of the site, the applicant notes that more than half of the site is being preserved in its natural state, the proposed construction will only take place within the Freshwater Wetlands Adjacent Area and not within the Freshwater Wetlands, and that DEC issued a freshwater wetlands permit for the proposed construction, which incorporated an environmental review that followed SEQR regulations; and

WHEREAS, in response to the Opposition's claim that the proposal does not satisfy the findings of ZR § 72-21 and that it creates potential zoning non-compliances, the Board notes that the findings under ZR § 72-21 are not applicable to an application under Section 35 of the General City Law, and that all issues related to zoning on the site are subject to review and approval by the Department of Buildings; and

WHEREAS, as to the Opposition's contention that the proposal must be reviewed by DCP, the applicant submitted a letter from DCP stating that the proposed project will require Special Natural Area District authorizations and review by the City Planning Commission, but that the project requires a

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Board determination before an application can be filed with DCP; and

WHEREAS, in response to the Opposition's concerns regarding a lack of parking, the applicant notes that off-street parking spaces will be provided for the proposed homes, the proposed Tupelo Court will be built out to a width of 38 feet such that parking can be provided on that street, and Richmond Road will be widened so that additional parking can be provided on that street; and

WHEREAS, while the Board recognizes the concerns expressed by the Opposition, such considerations are not part of an application to permit construction within the bed of a mapped street under Section 35 of the General City Law, and therefore are not subject to the Board's review; and

WHEREAS, the Board notes that the construction must comply with all requirements of the Zoning Resolution; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decisions of the Staten Island Borough Commissioner, dated May 10, 2010, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 20, 2012" – (3) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT all necessary DEC and DEP approvals must be obtained prior to the issuance of DOB permits;

THAT the necessary DCP review and authorization must be obtained prior to the issuance of DOB permits;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 24, 2012.

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## 86-11-A

APPLICANT – Cozen O'Connor, for Perl binder Holdings, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the Department of Buildings' revocation of an approval to permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2<sup>nd</sup> Avenue, northwest corner of East 36<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Hornstein.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 10 A.M., for deferred decision.

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## 154-11-A

APPLICANT – Eric Palatnik, for Atlantic Outdoor Advertising, Inc., owner.

SUBJECT – Application October 3, 2011 – Appeal seeking reversal of a Department of Buildings' determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 zoning district.

PREMISES AFFECTED – 23-10 Queens Plaza South, between 23<sup>rd</sup> Street and 24<sup>th</sup> Street, Block 425, Lot 5, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik and Alaina Paciulli.

For Opposition: John Egnatios-Beene.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for continued hearing.

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## 180-11-A & 181-11-A

APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.

SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 34-57 & 34-59 107<sup>th</sup> Street, between 34<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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**REGULAR MEETING  
TUESDAY AFTERNOON, APRIL 24, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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**ZONING CALENDAR**

**120-11-BZ**

**CEQR #12-BSA-013Q**

APPLICANT – Goldman Harris LLC. for Borden LIC  
Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit  
(§73-44) to reduce the parking requirement for office use  
and catering use (parking requirement category B1) in a new  
commercial building. M1-3 zoning district.

PREMISES AFFECTED – 52-11 29<sup>th</sup> Street, corner of 29<sup>th</sup>  
Street and Review Avenue. Block 295, Lot 1. Borough of  
Queens.

**COMMUNITY BOARD #2Q**

**APPEARANCES –**

For Applicant: Vivien R. Krieger.

**ACTION OF THE BOARD –** Application granted on  
condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Queens Borough  
Commissioner, dated August 15, 2011, acting on  
Department of Buildings Application No. 420301015, reads  
in pertinent part:

ZR 44-21: The proposed number of accessory  
parking spaces for Use Group 6B offices (PRC  
B1) and Use Group 9A Catering Establishment  
(PRC-B1) does not comply with 1 space per 300  
square feet requirement. This requires a reduction  
in parking spaces from BSA as per ZR 73-44; and

WHEREAS, this is an application under ZR §§ 73-44  
and 73-03, to permit, within an M1-3 zoning district, a  
reduction in the required number of accessory parking  
spaces for a mixed-use commercial/manufacturing building  
from 381 to 195, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this  
application on February 28, 2012, after due notice by  
publication in The City Record, with continued hearings on  
January 10, 2012, February 28, 2012 and March 27, 2012  
and then to decision on April 24, 2012; and

WHEREAS, the premises and surrounding area had  
site and neighborhood examinations by Chair Srinivasan,  
Commissioner Hinkson, Commissioner Montanez, and  
Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens,  
recommends approval of this application; and

WHEREAS, the subject site is located on a corner  
through lot bounded by 29<sup>th</sup> Street to the north, Review  
Avenue to the west, and 30<sup>th</sup> Street to the south, in an M1-3  
zoning district within the Long Island City Industrial  
Business Zone; and

WHEREAS, the site has a width of 125 feet, a depth of  
230 feet, and a total lot area of 28,750 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a 16-  
story mixed-use commercial/ manufacturing building, with a  
total floor area of 143,734 sq. ft. (5.0 FAR), and a 195-space  
attended accessory parking garage; and

WHEREAS, specifically, the applicant states that the  
proposed building will be occupied by the following uses:  
(1) 139 accessory attended parking spaces at the cellar level;  
(2) contractor storage and staging (Use Group 17A) and 11  
accessory attended parking spaces at the first floor; (3) 45  
accessory attended parking spaces at the second floor; (4)  
office space (Use Group 6B) at the third through 15<sup>th</sup> floors;  
and (5) catering space (Use Group 9A) at the 16<sup>th</sup> floor; and

WHEREAS, the applicant initially proposed a building  
with a 150-space accessory garage, based on the exclusion  
of certain floor area in the building from the parking  
calculations; and

WHEREAS, at the direction of the Board, the  
applicant revised its parking calculations to include all  
eligible floor area within the building, resulting in the  
revised proposal which provides an accessory garage with  
195 attended spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may,  
in the subject M1-3 zoning district, grant a special permit  
that would allow a reduction in the number of accessory off-  
street parking spaces required under the applicable ZR  
provision, for the noted Use Group 6 office use and Use  
Group 9 catering use in the parking category B1; in the  
subject zoning district, the Board may reduce the required  
parking from one space per 300 sq. ft. of floor area to one  
space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 44-21 the total number  
of required parking spaces for all uses at the site is 381; and

WHEREAS, the applicant represents that the proposed  
195 parking spaces are sufficient to accommodate the  
parking demand generated by the use of the site; and

WHEREAS, the applicant notes that 16,937 sq. ft. of  
floor space in the building is occupied by contractor storage  
and staging space (Use Group 17A), which is not in parking  
category B1 and therefore the associated eight required  
spaces have been excluded from the calculations for the  
requested reduction in parking; and

WHEREAS, the applicant states that 112,026 sq. ft. of  
floor area at the site will be occupied either by professional  
offices (Use Group 6) or catering space (Use Group 9),  
which are eligible for the parking reduction under ZR § 73-  
44; at a rate of one required parking space per 300 sq. ft. of  
floor area, 373 parking spaces are required for these uses;  
and

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# MINUTES

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WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 373; as noted, the special permit allows for a reduction from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area, which would reduce the required parking for these uses to 187 spaces; and

WHEREAS, as noted, an additional eight parking spaces are required for the portions of the building occupied by contractor storage and staging space (Use Group 17A), which are not eligible for the special permit; and

WHEREAS, thus, a total of 195 parking spaces are required for the uses on the site; and

WHEREAS, the applicant proposes to provide 195 accessory attended parking spaces on the subject site; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the Use Group 6 and Use Group 9 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant submitted a letter stating that the commercial space in the proposed building will be utilized solely as Use Group 6 office space and Use Group 9 catering space in parking category B1; and

WHEREAS, the applicant notes that the owner of the site, Navillus Contracting, is intended to be the tenant for all of the contractor space and approximately one-third of the office space in the building; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of the parking demand on the site; and

WHEREAS, in response, the applicant submitted a parking analysis based on transit and auto usage where 50 percent of employees utilized mass transit (and 50 percent utilized cars), which yielded an expected average parking demand of 1.5 spaces per 1,000 sq. ft., resulting in a peak parking demand of 167 spaces for the office and manufacturing space within the building; accordingly, the parking analysis concluded that the proposed 195 spaces is adequate to meet the parking demand at the site and provides a comfortable margin in the event that the actual demand exceeds the projected demand; and

WHEREAS, the parking analysis also indicated that the catering establishment would have a peak demand of 75 vehicles, and because the catering establishment would be more active in evening and weekend periods when there would be no parking demand from the office and manufacturing uses, the 195 spaces provided at the site are sufficient to accommodate this demand; and

WHEREAS, at hearing, the Board raised concerns regarding the potential for the catering facility to be used simultaneously with the office and manufacturing uses, thereby creating a shortage of on-site parking; and

WHEREAS, in response, the applicant states that, in order to avoid a shortage of on-site parking when the office and manufacturing portions of the building are fully occupied, the catering facility will not operate between the hours of 8:00 a.m. and 6:00 p.m. from Monday through Friday, except on state and federal holidays; and

WHEREAS, at hearing, the Board also inquired about whether stackers could be installed on the second floor, given its height of 25 feet, to provide additional parking; and

WHEREAS, in response, the applicant stated that it plans to install stackers in the future if the building reaches greater occupancy and the demand for parking increases, but currently there is not a demand for more parking than the proposed so the applicant seeks to avoid incurring additional costs until it is necessary to do so; the applicant notes that the second floor design can accommodate a significant number of additional spaces, if required; and

WHEREAS, based upon the above, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-44 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12SBA013Q, dated August 11, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City

# MINUTES

Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to permit, within an M1-3 zoning district, a reduction in the required number of accessory parking spaces for a mixed-use commercial/manufacturing building from 381 to 195, contrary to ZR § 44-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received February 14, 2012" – fifteen (15) sheets, and on further condition:

THAT there shall be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of 195 parking spaces shall be provided in the subject building;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

THAT the catering facility will not operate Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m., except on state and federal holidays;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT the layout and design of the accessory parking lot shall be as reviewed and approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 24, 2012.

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## 167-11-BZ

### CEQR #12-BSA-036X

APPLICANT – Eric Palatnik, P.C., for White Castle System, Inc., owner.

SUBJECT – Application October 20, 2011 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) with an accessory drive-through facility. C1-2/R5 zoning district.

PREMISES AFFECTED – 1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue, Block 3721, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Bronx Borough Commissioner, dated September 23, 2011, acting on Department of Buildings Application No. 220135510, reads in pertinent part:

“Proposed reconstruction of 3,190 sq. ft. restaurant with drive-thru, 3 curb cuts, 37 parking spaces and installation of associated signage (Menu Board) in a C1-2 in R5 zoning district requires a special permit from the BSA;” and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-2 (R5) zoning district, the reconstruction of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on February 28, 2012, with a continued hearing on March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

WHEREAS, a community member provided testimony complaining that passersby use a portion of the site for inappropriate conduct which is incompatible with adjacent residential uses; and

WHEREAS, the subject site is located on a corner through lot bounded by Metcalf Avenue to the west, Bruckner Boulevard to the north, and Fteley Avenue to the east, within a C1-2 (R5) zoning district; and

WHEREAS, the subject site has a total lot area of 52,421 sq. ft. and is currently occupied by a White Castle restaurant with a floor area of 2,755 sq. ft. (.051 FAR) and 56 parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 25, 1986 when, under BSA Cal. No. 278-86-BZ, the Board granted a special permit for the addition of a drive-through facility accessory to an eating and drinking establishment (Use Group 6), for a term of five years; and

WHEREAS, subsequently, the term was extended by the Board at various times; and

WHEREAS, most recently, on December 4, 2001, the Board granted an extension of term, which expired on November 26, 2011; and

WHEREAS, the applicant now seeks to demolish the existing eating and drinking establishment with accessory drive-through on the site and to reconstruct a new eating and drinking establishment with accessory drive-through with a floor area of 3,190 sq. ft. (.058 FAR) and 37 parking spaces;

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# MINUTES

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and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for a ten-car queue; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant submitted a vehicle circulation drawing reflecting that the site will provide a total of three curb cuts, with two curb cuts located on Fteley Avenue and a curb cut allowing for a right turn only onto Bruckner Boulevard to ensure that the drive-thru facility will cause minimal interference with traffic flow in the surrounding area; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-2 (R5) zoning district; and

WHEREAS, specifically, the applicant states that a minimum of ten parking spaces are required pursuant to ZR § 32-21, and a total of 37 accessory off-street parking spaces will be provided at the site; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, in support of this representation the applicant submitted a radius diagram reflecting that the site is located between the Bruckner Expressway and the Bronx River Parkway, a heavily trafficked intersection, and that there are approximately five gasoline stations within one mile of the site and at least two other eating and drinking establishments with drive-through facilities in the surrounding area (located at 1600 Bruckner Boulevard and 1851 Bruckner Boulevard); and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant represents that the fact that the proposed drive-through facility has operated at this site without complaints since 1986, when the Board granted the original special permit, is evidence that it does not have an adverse impact on residences in the surrounding area; and

WHEREAS, the applicant states that all of the curb cuts on the site will be located on Bruckner Boulevard and Fieley Avenue, thereby avoiding the creation of any undue adverse

impact on the residences on Metcalf Avenue; and

WHEREAS, the applicant further states that the menu board speaker will face away from the neighboring residential uses and will be located 190'-9" from the nearest residential area, which is more than 90'-0" further from the residential area than the existing speaker, while the proposed drive-through window will be located 159'-0" from the nearest residential area, which is approximately 50'-0" further from the residential area than the existing drive-through; and

WHEREAS, the applicant also submitted a lighting plan reflecting that all lighting on the site will be directed downward and away from the neighboring residential properties; and

WHEREAS, the applicant represents that adequate buffering between the drive-through facility and adjacent residential uses is provided; and

WHEREAS, specifically, the applicant submitted revised plans reflecting that it will maintain the opaque fence along the rear of the site with a height of six feet, replace the existing chain-link fence along Metcalf Avenue with a decorative fence with a height of four feet which will be set back five feet from the street line, and provide a landscape buffer along the property line, in accordance with ZR § 37-921; and

WHEREAS, at hearing, the Board questioned whether the site is in compliance with C1 district signage regulation; and

WHEREAS, in response, the applicant states that the signage on the site has been reduced to a maximum height of 25 feet, and submitted a signage analysis reflecting that the site is now in compliance with C1 district regulations; and

WHEREAS, the applicant seeks to maintain the existing 24 hours per day, seven days per week operation of the site; and

WHEREAS, in response to the complaint regarding inappropriate conduct at the site, the applicant represents that the area at issue is fenced off and the issue is not caused by customers or employees of the subject site; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA036X dated October 18, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;



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Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within a C1-2 (R5) zoning district, the operation of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; *on condition* “that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 17, 2012- eight (8) sheets; and *on further condition*:

THAT the term of this grant will expire on April 24, 2017;

THAT the premises will be maintained free of debris and graffiti;

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage will conform with the underlying C1 zoning district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, April 24, 2012.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105’ west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Assembly Member Barbara M. Clark, Joseph Goldbloom of Council Member Leroy Comrie, Kelli M. Singleton, Steven Taylor, and Michael Dunner.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for continued hearing.

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## 102-11-BZ

APPLICANT – H. Irving Sigman, for S & I Property Management, LLC, owner.

SUBJECT – Application July 20, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Spa*). M1-1 (CP) zoning district.

PREMISES AFFECTED – 131-23 31<sup>st</sup> Avenue, northwest corner of the intersection of 31<sup>st</sup> Avenue & Whitestone Expressway (West Service Road). Block 4361, Lot 27. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel and Barney Sigman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for decision, hearing closed.

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## 112-11-BZ

APPLICANT – Eric Palatnik, P.C., for Louis N. Petrosino, owner.

SUBJECT – Application August 9, 2011 – Variance (§72-21) to legalize the extension of the use and enlargement of the zoning lot of a previously approved scrap metal yard (UG 18), contrary to §32-10. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54<sup>th</sup> Street. Block 6947, Lot 260. Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 6, 2012, at 1:30 P.M., for decision, hearing closed.

## 174-11-BZ

APPLICANT – Daniel H. Braff, Esq., for The Church of Jesus Christ of Latter-day Saints, owner.

SUBJECT – Application November 9, 2011 – Variance (§72-21) to permit the development of a two-story chapel (*The Church of Jesus Christ of Latter-day Saints*), contrary to floor area ratio (§24-111) and permitted obstructions in the side yards and rear yard (§24-33). R2A zoning district. PREMISES AFFECTED – 145-15 33<sup>rd</sup> Avenue, north side of 33<sup>rd</sup> Avenue approximately 400’ east of Parsons Boulevard, Block 4789, Lot 81, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Daniel H. Braff, Fernando Fernandez, Richard Hedberg, Michael Bouralet, Charlene Grant, Robert DeRosa, Javier A. Castro, Saaf Hoppie, Spence Shin and Jaron Harding.

For Opposition: Senator Tony Avella, Don Capalbi for Assembly Member Grace Meng, Tyler D. Cassell of CB2, Peter J. Brancazio, Millicent O’Meally, Paul DiBenedetto, Mel Siegel, Margaret Dandola, Sandi Vivieni, Janet McCresch, Marilyn Sadallah, Paul Graziano, John Stiller, David Goldstein and Henry Euler.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.

## 176-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Lubimor, owner.

SUBJECT – Application November 14, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Ed Jaworski.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for decision, hearing closed.

## 3-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Michael Weissman, owner.

SUBJECT – Application January 4, 2012 – Special Permit (§73-622) for the enlargement an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(b)) requirements. R4 zoning district.

PREMISES AFFECTED – 1913 East 28<sup>th</sup> Street, east side of East 28<sup>th</sup> Street, 100’ south of Avenue S. Block 7307, Lot 88. Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for decision, hearing closed.

## 7-12-BZ

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.

## 26-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Elmnic, LLC, owner.

SUBJECT – Application February 3, 2012 – Special Permit (§73-52) to allow the extension of accessory commercial parking in a residential zoning district. C1-2/R6B & R4-1 zoning districts.

PREMISES AFFECTED – 73-49 Grand Avenue, northwest corner of the intersection formed by Grand Avenue and 74<sup>th</sup> Street, Block 2491, Lot 40, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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## \*CORRECTION

This resolution adopted on February 28, 2012, under Calendar No. 47-11-BZ and printed in Volume 97, Bulletin Nos. 9-10, is hereby corrected to read as follows:

### 47-11-BZ

#### CEQR #11-BSA-082Q

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*) with dormitories, contrary to use (§22-13), floor area (§§23-141 and 24-111), side setback (§24-551) and parking regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25<sup>th</sup> Street, west side of Bay 25<sup>th</sup> Street, between Bayswater Avenue and Healy Avenue. Block 15720, Lot 67, Borough of Queens.

#### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 8, 2011, acting on Department of Buildings Application No. 420166938, reads in pertinent part:

Proposed use is contrary to ZR 22-13.

Proposed floor area is contrary to ZR 23-141 and 24-111.

Proposed required side setback for tall buildings in low bulk districts is contrary to ZR 24-551; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the construction of a two- and three-story yeshiva and dormitory building (Use Group 3) which does not conform to the underlying use regulations and does not comply with zoning requirements related to floor area and side setback, contrary to ZR §§ 22-13, 23-141, 24-111, and 24-551; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in the *City Record*, with continued hearings on October 25, 2011, December 6, 2011, and January 24, 2012, and then to decision on February 28, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommended disapproval of an earlier iteration of the application; and

WHEREAS, Queens Borough President Helen Marshall

recommended disapproval of an earlier iteration of the application, citing concerns that the building would be out of scale with the character of the surrounding neighborhood and the increased pedestrian and vehicular traffic that would be generated by the community facility; and

WHEREAS, City Councilmember James Sanders, Jr. provided testimony expressing support for the yeshiva but opposition to the proposed dormitory use based on concerns with the number of beds in the facility, parking, and the impact on the rising water table in the surrounding area; and

WHEREAS, representatives of the Bayswater Civic Association and certain members of the community provided testimony in opposition to this application (hereinafter, the “Opposition”), raising the following primary concerns: (1) the incompatibility of the proposed facility with the surrounding neighborhood; (2) the potential for increased traffic; (3) insufficient parking in the area; (4) the potential for excessive noise generated by the students residing in the dormitory rooms; (5) the proposal otherwise does not satisfy the findings of ZR § 72-21; (6) the proposed use does not qualify for educational deference; and (7) there are problems with the Board’s process; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of Yeshiva Zichron Aryeh (the “Yeshiva”), a not for profit educational institution; and

WHEREAS the site is located on the west side of Bay 25<sup>th</sup> Street between Bayswater Avenue and Healy Avenue, within an R2 zoning district; and

WHEREAS, the site consists of an irregularly-shaped lot with approximately 95 feet of frontage on Bay 25<sup>th</sup> Street and a total lot area of 35,819 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed dormitory use is not permitted in the subject R2 zoning district and the proposed bulk exceeds the complying building envelope for a conforming use, thus the applicant seeks a variance for the proposed building; and

WHEREAS, the applicant proposes to construct a three-story yeshiva and dormitory building with the following complying parameters: lot coverage of 35.5 percent (a maximum lot coverage of 55 percent is permitted); a roof height of 39’-6” (as governed by sky exposure plane regulations); a front yard with a depth of 63’-8 11/16” (a front yard with a minimum depth of 15’-0” is required); two side yards with minimum widths of 13’-4” each (two side yards with minimum widths of 8’-0” each are required); a rear yard with a depth of 30’-0” (a rear yard with a minimum depth of 30’-0” is required); and 28 accessory off-street parking spaces (a minimum of 27 spaces are required); and

WHEREAS, however, the proposed building results in the following non-compliances: a floor area of 35,476 sq. ft. (the maximum permitted floor area is 17,909.6 sq. ft.); an FAR of 0.99 (the maximum permitted FAR is 0.50); a side setback of 15’-0” above a height of 35’-0” along the northern side of the building (a minimum side setback of 24’-4 1/16” is required); and a side setback of 15’-0” above a height of 35’-0” along the southern side of the building (a minimum side

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setback of 25'-0 15/16" is required); and

WHEREAS, the applicant originally proposed a building with a floor area of 39,286 sq. ft. (1.1 FAR), side setbacks of 14'-6" each, a roof height of 44'-6", and 13 accessory off-street parking spaces, which would have necessitated an additional waiver for less than the minimum number of required parking spaces; and

WHEREAS, however, in response to concerns raised by the Board and the Opposition, the applicant revised the proposal several times during the course of the hearing process, ultimately reducing the degree of non-compliance as to floor area and side setback, reducing the roof height of the building to 39'-6", and providing a complying number of parking spaces; and

WHEREAS, the applicant states that the proposed building provides the following uses: (1) a gymnasium, dining room, pool, dairy kitchen, meat kitchen, and mechanical rooms at the sub-cellar level; (2) a synagogue, exercise room, music room, mechanical room, and storage at the cellar level; (3) a science laboratory, computer room, classrooms, and offices at the first floor; (4) a Bais Medrash, library, classrooms, and offices at the second floor; and (5) a student lounge, laundry room, and 15 dormitory rooms at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; and (2) providing an on-site dormitory to allow for an integrated living and learning environment; and

WHEREAS, the applicant states that the Yeshiva provides education from high school (grades nine through 12) through graduate school and currently operates out of several separate buildings in the surrounding neighborhood, which combine to accommodate its enrollment of 135 students with 49 students in dormitory rooms, and approximately 30 staff members; and

WHEREAS, the applicant represents that there are also many students on a waiting list for the Yeshiva; and

WHEREAS, the applicant states that the Yeshiva's existing facilities have been unable to keep up with the needs of the student body and they have been renting additional space in a number of buildings in the surrounding neighborhood; and

WHEREAS, the applicant represents that for the past two years the existing dormitory buildings the Yeshiva rents have been at capacity, and the Yeshiva is in the process of finding additional space for dormitories for the current school year; and

WHEREAS, in addition to the difficulties posed by operating the Yeshiva out of multiple buildings scattered throughout the neighborhood, the applicant states that the existing facilities are deficient for the following reasons: the existing dining area is not large enough to accommodate the entire student body; the kitchen does not have adequate space to prepare the necessary amount of food; the main college study hall building is a rented facility that is shared with a synagogue, such that they do not always have access to the space; there is a lack of office space; and two classes currently have to meet in the hallway due to space constraints; and

WHEREAS, the applicant represents that the Yeshiva anticipates increasing its enrollment within the next two years

to 220 students, with 45 associated staff members; and

WHEREAS, the applicant states that in order to accommodate the student population and provide a program that will meet their needs, the Yeshiva requires six high school classrooms, four undergraduate/graduate classrooms, a library, science laboratory, a computer room, prayer space, physical education space, and dormitory space; and

WHEREAS, during the hearing process, the Board asked the applicant to explain the need for the proposed dormitory rooms, which the applicant claims are a component of the programmatic needs; and

WHEREAS, in response, the applicant states that the dormitory rooms are necessary to meet the programmatic needs of the Yeshiva due to the rigorous and intensive course of study followed by the students; and

WHEREAS, specifically, the applicant states that the high school portion of the Yeshiva provides a dual curriculum in which each student must complete a full course load of secular studies and a full course load of religious studies, which extends into the evening hours and necessitates sleeping accommodations be provided for certain students; and

WHEREAS, the applicant further states that undergraduate students begin their day with morning prayers at 7:45 a.m., followed by a day filled with classes and studying until their final evening prayer begins at 10:00 p.m., with breaks only provided for meals; and

WHEREAS, the applicant states that between the end of evening prayers and the beginning of morning prayers is approximately nine hours, and in this limited time the students must sleep, complete any remaining studies, and prepare for their day; and

WHEREAS, the applicant represents that because of this schedule students require immediate access to their living areas in order to make effective use of the limited time they have outside of classes and study sessions; and

WHEREAS, the applicant further represents that locating the Yeshiva and the dormitories in the same building is integral to the students learning due to the unbroken continuance of focus that occurs when the students do not leave the facility, and this immersion allows the students to more fully devote themselves to both their religious and secular studies without distractions; and

WHEREAS, the applicant also submitted a list of other yeshivas that provide dormitory beds for their students in comparable facilities; and

WHEREAS, the applicant represents that a complying building at the site would not provide an adequate amount of space for the current number of students and faculty or for the anticipated growth in enrollment; and

WHEREAS, specifically, the applicant submitted plans for a complying building which would result in the elimination of two high school classrooms, one graduate classroom, the science laboratory, the Bais Medrash, and all 15 dormitory rooms; and

WHEREAS, the applicant also submitted plans for a lesser variance scenario which would request the use waiver but comply with all bulk requirements; and

WHEREAS, the applicant states that the lesser variance

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scenario would result in the elimination of the Bais Medrash, all graduate classrooms, a science room and eight dormitory rooms, and would not provide a sufficient amount of space to meet the needs of the Yeshiva; and

WHEREAS, the applicant states that the requested floor area and side setback waivers are necessary to accommodate the space needs associated with the projected student body, and the use waiver is necessary to provide dormitory space within the proposed building; and

WHEREAS, as to the floor area, the applicant states that without the floor area waiver approximately half of the proposed floor area would be lost, and the resultant building would be inadequate to provide sufficient classroom or program space to meet the needs of the Yeshiva; and

WHEREAS, as to the side setbacks, the applicant states that the setback waivers are required to achieve floor plates that accommodate the necessary number of beds in the dormitory, as without such waivers the Yeshiva could not provide the 58 beds necessary to accommodate the projected enrollment; and

WHEREAS, as to the use waiver, the applicant notes that it could have applied for a special permit for the subject site pursuant to ZR § 73-122 which would authorize the proposed dormitory use in the subject R2 zoning district, but a variance would still be required to construct the proposed building due to the requested bulk waivers; and

WHEREAS, the applicant submitted evidence in support of its claim that it could satisfy the findings required for the special permit under ZR § 73-122, provided the Board allowed the dormitory FAR to be calculated independently of the FAR for the remainder of the building; and

WHEREAS, the applicant states that only the proposed variance building can accommodate the Yeshiva's projected enrollment and satisfy the programmatic needs and space requirements of its students; and

WHEREAS, based upon the above, the Board agrees that the cited programmatic needs are legitimate and have been documented with substantial evidence; and

WHEREAS, the Board acknowledges that the Yeshiva, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the limitations of the existing zoning, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposal is in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the use of the site as a yeshiva is permitted as-of-right in the subject R2 zoning district, and dormitory use is permitted in the subject R2 zoning district by special permit under ZR § 73-122, which the applicant states is an acknowledgment that the use itself can be compatible with surrounding uses in the R2 zoning district; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized predominantly by single-family homes ranging in height from one-and-one-half to three stories; and

WHEREAS, accordingly, the applicant states that the height of the proposed two- and three-story building complies with the underlying district regulations and will fit within the character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the proposed building will comply with all yard requirements for a community facility building in the subject R2 district, and the building will be significantly set back from the street, providing a front yard with a depth of 63'-8 11/16", more than four times the depth required in the underlying zoning district; and

WHEREAS, the applicant notes that the building is also designed to be lower in the front, with a front setback of more than 30 feet above the second floor, to make the building more consistent with the character of the surrounding neighborhood; and

WHEREAS, the applicant further notes that the building will also be screened from surrounding residences by providing a significant amount of landscaping around the perimeter of the site and in the front yard to create a break in the façade; and

WHEREAS, as noted above, the Opposition made a number of arguments and observations regarding the instant application; and

WHEREAS, as to the Opposition's argument that the scale of the building is out of context with the surrounding neighborhood, the applicant notes that the subject site is larger than the surrounding developed properties and can support a building that is larger than other buildings in the immediate vicinity; and

WHEREAS, the applicant further states that the proposed building complies with all underlying bulk regulations aside from FAR and side setbacks, and that the complying height and yards, in conjunction with the buffering provided by the proposed landscaping result in a building that fits within the context of the surrounding neighborhood; and

WHEREAS, further, the Board finds that the applicant has credibly established that the proposed dormitory use and the requested bulk waivers are necessary to provide a facility that can satisfy the Yeshiva's programmatic needs; and

WHEREAS, as to the Opposition's concerns about traffic impact, the applicant notes that the proposed building will serve an existing yeshiva that already operates in the surrounding area, and states that the increased enrollment at the proposed building will not result in a significant impact on

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transit or pedestrian traffic; and

WHEREAS, the applicant provided a survey analyzing the anticipated difference in vehicle trips between the current operation of the Yeshiva and the operation under the proposed building, which indicates that of the 265 students and staff at the proposed facility, 58 students will live in the dormitory rooms and will not travel to or from the site, and it is anticipated that of the remaining 207 students and staff, 77 people will walk, 75 people will drive, 40 people will arrive by school van, 14 people will be dropped off/picked up, and one person will arrive by public transportation; and

WHEREAS, the applicant states that the anticipated transportation to and from the site does not exceed the thresholds listed in the CEQR manual, and therefore the proposed use will not result in a significant impact on traffic; and

WHEREAS, as to the Opposition's concerns regarding parking, the Board notes that the applicant revised its plans to provide 28 parking spaces, which complies with the requirements of the Zoning Resolution; and

WHEREAS, as to the Opposition's concern that the students residing at the proposed facility will create excessive noise in the predominantly residential area, the applicant states that noise attenuation will be achieved by insulating the exterior walls of the building and installing double pane low E windows equipped with shades; and

WHEREAS, the applicant states that the proposed building will also be screened from adjacent residences by providing landscaping around the perimeter and in front of the building, and minimizing exterior lighting by utilizing directional fixtures focused on the site and short post lighting in lieu of large pylon lighting when feasible; and

WHEREAS, the Opposition also made other arguments as to the Board's findings, process, and educational deference, which the Board has considered and does not find persuasive; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development in conformance with zoning would meet the programmatic needs of the Yeshiva at the site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, as noted above, the applicant originally proposed to construct a building with a floor area of 39,286 sq. ft. (1.1 FAR), a roof height of 44'-6", and 13 accessory off-street parking spaces; and

WHEREAS, in response to concerns raised by the Board and the Opposition during the course of the hearing process,

the applicant reduced the size of the building in terms of FAR, height, and side setbacks, in order to create a more compatible building envelope, and revised the parking layout to provide a complying number of accessory parking spaces; and

WHEREAS, therefore, the Board agrees that the requested relief is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

WHEREAS, in sum, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA082Q, dated January 6, 2012; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R2 zoning district, the construction of a three-story yeshiva and dormitory building which does not conform to the underlying use regulations and does not comply with zoning requirements related to floor area and side setback, contrary to ZR §§ 22-13, 23-141, 25-111, and 25-551; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 25, 2012" – (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 35,476 sq. ft. (0.99 FAR); a side setback of 15'-0" above a height of 35'-0" along the northern side of the building; a side setback of 15'-0" above a

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height of 35'-0" along the southern side of the building; a roof height of 39'-6"; lot coverage of 35.5 percent; a front yard with a depth of 63'-8 11/16"; two side yards with minimum widths of 13'-4" each; a rear yard with a depth of 30'-0"; and 28 accessory off-street parking spaces, as reflected on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT no commercial catering is permitted within the building or on-site;

THAT the occupancy of the dormitory will be limited to 58 beds;

THAT landscaping will be provided and maintained as indicated on the BSA-approved plans;

THAT all exterior lighting will be directed downward and away from adjacent residential uses;

THAT the exterior walls of the building will be insulated and double pane low E windows will be installed;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction be completed in accordance with ZR §72-23;

THAT the approved plans be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2012.

**\*The resolution has been revised to correct the Resolved which read: ... " ZR §§ 22-13, 23-141, 25-111, and 24-551,"... now reads: ... " ZR §§ 22-13, 23-141, 25-111, and 25-551;". Corrected in Bulletin Nos. 16-18, Vol. 97, dated May 3, 2012.**

## \*CORRECTION

This resolution adopted on March 27, 2012, under Calendar No. 4-12-BZ and printed in Volume 97, Bulletin No. 14, is hereby corrected to read as follows:

### 4-12-BZ

#### CEQR #12-BSA-064M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 56<sup>th</sup> and Park (NY) Owner, LLC.

SUBJECT – Application January 11, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Wright Fit*). C5-3/C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 432-440 Park Avenue, northwest corner of Park Avenue and East 56<sup>th</sup> Street, Block 1292, Lot 33, 43, 45, 46, Borough of Manhattan.

#### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 21, 2011, acting on Department of Buildings Application No. 120628776, reads in pertinent part:

“Proposed physical culture establishment is not permitted as of right in a C5-2.5 & C5-3 district as per ZR 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment (PCE) on portions of the first and sixth floors and the entire seventh and ninth floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, and then to decision on March 27, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregularly shaped lot located on the northwest corner of Park Avenue and East 56<sup>th</sup> Street, with a mid-block portion that fronts on both East 56<sup>th</sup> Street and East 57<sup>th</sup> Street, in the Special Midtown District (MID), partially within a C5-2.5 and partially within

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# MINUTES

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a C5-3 zoning district; and

WHEREAS, the applicant proposes to construct an 82-story mixed-use residential/ commercial building at the site; and

WHEREAS, the PCE will occupy a total of approximately 20,660 sq. ft. of floor area on portions of the first and sixth floors, and the entire seventh and ninth floors; and

WHEREAS, the PCE will be operated by the Wright Fit; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District (MID); and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Special Midtown District (MID) and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; and

WHEREAS, at hearing, the Board directed the applicant to address the sound attenuation measures that will be provided in the proposed PCE; and

WHEREAS, in response, the applicant states that residential occupancy of the proposed building will begin at the 14<sup>th</sup> floor, and therefore there will be significant separation between the proposed PCE and any residential uses in the building; and

WHEREAS, the applicant also submitted revised plans reflecting that the seventh floor will provide a six-inch floating concrete floor above the ten-inch structural concrete slab, in order to provide sound attenuation for the PCE equipment located on that floor; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA064M, dated January 11, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within the Special Midtown District (MID), partially within a C5-2.5 and partially within a C5-3 zoning district, the operation of a physical culture establishment on portions of the first and sixth floors and the entire sixth and ninth floors of a proposed 82-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 13, 2012"- (7) sheets, and *on further condition*:

THAT the term of this grant will expire on March 27, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the BSA-approved plans;

THAT sound attenuation measures will be provided as shown on the BSA-approved plans;

THAT the proposed building will be reviewed by



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# MINUTES

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DOB for compliance with all bulk regulations of the Zoning Resolution;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 27, 2012.

**\*The resolution has been revised to correct the part which read...portions of the first and fourth floors and the entire sixth and seventh floors... now reads...portions of the first and sixth floors and the entire seventh and ninth floors.... Corrected in Bulletin Nos. 16-18, Vol. 97, dated May 3, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, No. 19

May 9, 2012

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### DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

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**117-12-A**

Van Wyck Expressway & Atlantic Avenue, Van Wyck Expressway & Atlantic Avenue, Queens, New York, Block 9989, Lot(s) 70, Borough of **Queens, Community Board: 12**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 district.  
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**118-12-A**

BQE & Queens Boulevard, BQE & Queens Boulevard, Queens, New York, Block 0, Lot(s) 0, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5B/R4-1/R7X/C2 district.  
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**119-12-A**

BQE & 31st Avenue, BQE & 31st Avenue, Block 1137, Lot(s) 22, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 district.  
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**120-12-A**

BQE & 31st Avenue, Block 1137, Lot(s) 22, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 district.  
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**121-12-A**

BQE & 32nd Avenue, Block 1137, Lot(s) 22, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 district.  
-----

**122-12-A**

BQE & 32nd Avenue, Block 1137, Lot(s) 22, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 district.  
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**123-12-A**

BQE & 34th Avenue, Block 1255, Lot(s) 1, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5, M1-1 district.  
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**124-12-A**

BQE & 34th Avenue, Block 1255, Lot(s) 1, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5, M1-1 district.  
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**125-12-A**

Long Island Expressway, East of 25th Street, Block 110, Lot(s) 1, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-2, M3-1 district.  
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**126-12-A**

Long Island Expressway, East of 25th Street, Block 110, Lot(s) 1, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1 district.  
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**127-12-A**

Northern Boulevard and BQE, Block 1163, Lot(s) 1, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 district.  
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**128-12-A**

Queens Boulevard and BQE, Block 1343, Lot(s) 129 & 139, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C2-3, R7X, R5B district.  
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# DOCKET

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## 129-12-A

Queens Boulevard and 74th Street, Block 2448, Lot(s) 213, Borough of **Queens, Community Board: 04**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 district.

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## 130-12-A

Skillman Avenue, b/t 28th and 29th Street, Block 72, Lot(s) 250, Borough of **Queens, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1 district.

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## 131-12-A

Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot(s) 230, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 (WP) district.

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## 132-12-A

Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot(s) 230, Borough of **Queens, Community Board: 01**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 (WP) district.

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## 133-12-A

Woodhaven Boulevard N/O Elliot Avenue, Block 3101, Lot(s) 9, Borough of **Queens, Community Board: 06**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3A, R4, R7A district.

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## 134-12-A

Long Island Expressway & 74th Street, Block 2814, Lot(s) 4, Borough of **Queens, Community Board: 05**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1, M1-1, R4- district.

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## 135-12-A

Long Island Expressway & 74th Street, Block 2814, Lot(s) 4, Borough of **Queens, Community Board: 05**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1, M1-1, R4- district.

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## 136-12-A

37-27 Hunter's Point, Hunter's Point Avenue between Greenpoint Avenue and 38th Street, Block 234, Lot(s) 31, Borough of **Queens, Community Board: 2**. Appeal from Department of Buildings determination that the owner has not established use as a non-conforming advertising sign in a residential district. R-4 Zoning District. R4 district.

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## 137-12-BZ

515-523 East 73rd Street, The north side of the premises is situated on East 74th Street 357.62 feet from the corner formed by the intersection of FDR Drive and East 74th Street and 223 feet from the corner of the intersection formed by York Avenue and East 74th Street. The south, Block 1485, Lot(s) 11, 14, 40, Borough of **Manhattan, Community Board: 08**. Variance (§72-21) requesting waivers of §§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133 to waive the rear-yard equivalent along East 73rd Street, allow community facility Use Group 4 in a 5.59 foot wide strip of the premises, waive a 20 foot setback along East 73rd Street, increase floor area ratio and increase the number of parking spaces permitted for the construction of a 13-story ambulatory diagnostic and treatment health care facility. M1-4/M3-2 district.

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## 138-12-BZ

2051 East 19th Street, between Avenue U and Avenue T, Block 7324, Lot(s) 64, Borough of **Brooklyn, Community Board: 15**. One side yard was over built leaving a 2'-0" side yard where 5' is required. R5 district.

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## 139-12-BZ

34-10 12th Street, southwest corner of 34th Avenue and 12th Street, Block 326, Lot(s) 29, Borough of **Queens, Community Board: 01**. Proposed enlargement of existing non-conforming manufacturing building: warehouse (use group 16) and factory (use group 17) within an R5 residential zoning district is contrary to 22-00 ZR for enlargement. A special permit is required pursuant to 73-53ZR. Refer to Board of Standards and Appeals. R5 district.

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# DOCKET

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**140-12-A**

69 Parkwood Avenue, east side of Parkwood Avenue, 200'south of intersection of Parkwood and Uncas Avenues., Block 6896, Lot(s) 120(tent), Borough of **Staten Island, Community Board: 03**. Appeal from decision of Borough Commissioner denying permission for proposed construction of a two family dwelling partially within the bed of a mapped street. R3X(SRD) district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**MAY 15, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 15, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**849-49-BZ**

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, Esq., for Directors of Guild of America, Inc., owner.  
SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued use of a motion picture theater and other uses which expired on January 31, 2012. C5-3(MID) zoning district.

PREMISES AFFECTED – 110 West 57<sup>th</sup> Street, southside of 57<sup>th</sup> Street, between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 1009, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**12-91-BZ**

APPLICANT – Rampulla Associates Architects, for Miggy's Too Delicatessen Corp., owner.

SUBJECT – Application March 12, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 food store (*Bayer's Market*) which expired on April 21, 2012; Amendment to eliminate the landscaping at the rear of the site, legalize an outdoor refrigeration unit, the elimination of the hours for garbage pickup and request to extinguish the term of the variance. R3-2 zoning district.

PREMISES AFFECTED – 2241 Victory Boulevard, north south corner of Victory Boulevard and O'Connor Avenue, Block 463, Lot 25, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**136-01-BZ**

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corp., owner.

SUBJECT – Application April 20, 2012 – Extension of Time to complete Construction and obtain a Certificate of Occupancy for a previously granted Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on March 21, 2012. M1-4/R-7A zoning district.

PREMISES AFFECTED – 11-11 44<sup>th</sup> Drive, north side of 44<sup>th</sup> Drive between 11<sup>th</sup> Street and 21<sup>st</sup> Street, Block 447, Lot 13, Borough of Queens.

**COMMUNITY BOARD #2Q**

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**APPEALS CALENDAR**

**196-11-A**

APPLICANT – Bryan Cave, LLP, for Jamaica Estates Design Group LLC, owner.

SUBJECT – Application December 27, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.

PREMISES AFFECTED – 178-06 90<sup>th</sup> Avenue, southeast corner of the intersection of 90<sup>th</sup> Avenue and 178<sup>th</sup> Street, Block 9894, Lot 47, 48, 51, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**MAY 15, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 15, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**192-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center contrary to §23-35 (Minimum Lot Width/Area), §25-31 (Required Parking) and §25-62 & §35-68 (Parking Lot Maneuverability). R2/LDGMA district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**20-12-BZ**

APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment in a portion of an existing one-story commercial building. C2-2\R5B zoning district - occupying 3,690 square feet on the ground floor and 20,640 square feet on the sub-cellar in an under construction mixed residential/commercial building.

PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3<sup>rd</sup> Street, northeast corner of Berry and N. 3<sup>rd</sup> Streets, Block 2351, Lot 1087, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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# CALENDAR

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## **31-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application February 8, 2012 – Special Permit (ZR §73-50) to seek a waiver of rear yard requirements per ZR §33-292 to permit the construction of commercial building. C8-3 zoning district.

PREMISES AFFECTED – 280 West 155<sup>th</sup> Street, corner of Frederick Douglas Boulevard and West 155<sup>th</sup> Street, Block 2040, Lot 48, 61 & 62, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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## **49-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Laterra, Inc., owner; Powerhouse Gym “FLB”, Inc., lessee.

SUBJECT – Application March 2, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Powerhouse Gym*) in a portion of an existing one-story commercial building. C2-2\R5B zoning district.

PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, northeast corner of Francis Lewis Boulevard and 34<sup>th</sup> Avenue, Block 6077, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**

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## **53-12-BZ**

APPLICANT – Law Office of Frederick A. Becker, for Linda Laitz and Robert Laitz, owners.

SUBJECT – Application March 8, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141); less than the minimum required side yard (ZR §23-461 & §23-48) and less than the required rear yard (ZR §23-47). R-2 zoning district.

PREMISES AFFECTED – 1232 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue L and Avenue M, Block 7644, Lot 59, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*



# MINUTES

## REGULAR MEETING TUESDAY MORNING, MAY 1, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

### SPECIAL ORDER CALENDAR

#### 21-01-BZ

APPLICANT – Troutman Sanders, LLP, for Mattone Group  
Jamaica Co., LLC, owner; Bally's Total Fitness of Greater  
New York, lessee.

SUBJECT – Application January 23, 2012 – Extension of  
Term of a special permit (§73-36) for the continued  
operation of a physical culture establishment (*Bally Total  
Fitness*) which expired on May 22, 2011. C6-3 (DJ) zoning  
district.

PREMISES AFFECTED – 159-02 Jamaica Avenue, 160<sup>th</sup>  
Street, Block 10100, Lot 1, Borough of Queens.

#### COMMUNITY BOARD #12Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on  
condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an  
extension of the term of a previously granted special permit for  
a physical culture establishment (“PCE”), which expired on  
May 22, 2011; and

WHEREAS, a public hearing was held on this  
application on March 27, 2012, after due notice by publication  
in *The City Record*, and then to decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had a site  
and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 12, Queens,  
recommends approval of this application; and

WHEREAS, the subject building occupies the entirety of  
Block 10100, bounded by Jamaica Avenue to the north, 160<sup>th</sup>  
Street to the east, Archer Avenue to the south, and Parsons  
Boulevard to the west, in a C6-3 zoning district within the  
Special Downtown Jamaica District; and

WHEREAS, the PCE occupies a total of 24,014 sq. ft. of  
floor area on the first and second floors of a three-story  
commercial building on the site; and

WHEREAS, the Board has exercised jurisdiction over the  
subject site since May 22, 2001 when, under the subject  
calendar number, the Board granted a special permit for a PCE  
in the subject building for a term of ten years, which expired on  
May 22, 2011; and

WHEREAS, the applicant now seeks to extend the term

of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the  
Board finds 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 *reopens* and *amends* the resolution, as adopted on  
May 22, 2001, so that as amended this portion of the resolution  
shall read: “to extend the term for a period of ten years from  
May 22, 2011, to expire on May 22, 2021, *on condition* that  
the use and operation of the site shall substantially conform  
to plans filed with this application marked “Received  
January 23, 2012”-(4) sheets; and *on further condition*:

THAT the term of this grant will expire on May 22, 2021;

THAT the above condition will be listed on the certificate  
of occupancy;

THAT all conditions from prior resolutions not  
specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the  
Board in response to specifically cited and filed DOB/other  
jurisdiction objection(s) only;

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the Zoning  
Resolution, the Administrative Code, and any other relevant  
laws under its jurisdiction irrespective of  
plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 400910065)

Adopted by the Board of Standards and Appeals, May 1,  
2012.

#### 256-02-BZ

APPLICANT – Goldman Harris LLC, for 160 Imlay Street  
Real Estate, owner.

SUBJECT – Application February 10, 2012 – Extension of  
Time to Complete Construction of a previously granted  
Variance (§72-21) for the re-use of a vacant six story  
manufacturing building, and the addition of three floors, for  
residential (UG2) use, which expired on March 18, 2012.  
M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, bounded by  
Imlay, Verona and Commerce Streets and Atlantic Basin,  
Block 515, Lot 75, Borough of Brooklyn.

#### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Engene Travors.

**ACTION OF THE BOARD** – Application granted on  
condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and  
an extension of time to complete construction of a  
previously granted variance to permit the conversion of an  
existing six-story industrial building to residential use; and

WHEREAS, a public hearing was held on this

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application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the west side of Imlay Street between Commerce Street and Verona Street, within an M2-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 23, 2003 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing vacant six-story industrial building to residential use, contrary to § 42-00; and

WHEREAS, the Board notes that, pursuant to ZR § 72-23, a variance automatically lapses if substantial construction in accordance with the approved plans is not completed within four years from the date of the variance; however, if judicial proceedings have been instituted to review the Board's decision, the four-year lapse period commences upon the date of entry of the final order in such proceedings, including appeals; and

WHEREAS, the applicant notes that judicial proceedings were instituted to review the Board's decision in the subject case (In the Matter of Red Hook/Gowanus Chamber of Commerce v. New York City Board of Standards and Appeals, et. al., Index No. 2308/04); and

WHEREAS, the applicant submitted a Decision and Order from the Appellate Division dated March 18, 2008, which denied the amended petition and dismissed the proceeding for failure to join a necessary party; and

WHEREAS, the applicant states that the March 18, 2008 Decision and Order has not been appealed and constitutes a final order in the proceeding for the purposes of ZR § 72-23; and

WHEREAS, accordingly, the four-year lapse period for the variance commenced on March 18, 2008, and substantial construction was to be completed by March 18, 2012; and

WHEREAS, the applicant states that due to financing delays and additional delays related to the subject litigation, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 23, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on May 1, 2016; *on condition:*

THAT substantial construction shall be completed by May 1, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 301396790)

Adopted by the Board of Standards and Appeals, May 1, 2012.

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## 77-05-BZ

APPLICANT – Wachtel & Masyr, LLP, for Jack Ancona, owner.

SUBJECT – Application February 21, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the construction of a 12-story mixed use building, containing residential (UG2) and retail uses (UG6) which expired on February 28, 2010; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 132 West 26<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 801, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a previously granted variance to permit the construction of a 12-story mixed-use residential/retail building, which expired on February 28, 2010; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in *The City Record*, and then to decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, the subject site is located on the south side of West 26<sup>th</sup> Street between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since February 28, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a 12-story mixed-use building with commercial use on the first and second floors and residential use above, contrary to ZR § 42-00; and

WHEREAS, substantial construction was to be completed by February 28, 2010, in accordance with ZR § 72-

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23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated February 28, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on May 1, 2016; *on condition*:

THAT substantial construction shall be completed by May 1, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 104039728)

Adopted by the Board of Standards and Appeals, May 1, 2012.

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## 808-55-BZ

APPLICANT – Sheldon Lobel, P.C., for 35 Bell Realty Inc., owner; Cumberland Farms, Inc., lessee.

SUBJECT – Application February 14, 2012 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) with accessory convenience store which expired on March 27, 2012; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, southwest corner of the intersection formed by Bell Boulevard and 35<sup>th</sup> Avenue, Block 6169, Lot 6, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 10 A.M., for decision, hearing closed.

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## 820-67-BZ

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres. Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of Term of an approved Variance (§72-21) for the operation of a automotive repair shop (UG16) which expired on November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of 414.19' south Woodruff Lane, Block 197, Lot 34, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Willy Yuin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for decision, hearing closed.

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## 64-96-BZ

APPLICANT –Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.

SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.

PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14<sup>th</sup> Avenue, Block 4645, Lot 3, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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## 305-00-BZ

APPLICANT – Robert A. Caneco, for Robert Gullery, owner.

SUBJECT – Application April 16, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-21) for the continued operation of a UG8 parking lot which expired on January 15, 2004; waiver of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 268 Adams, south side of Adams Avenue between Hylan Boulevard and Boundary Avenue, Block 3672, Lot 14, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Robert A. Caneco.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

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**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for decision, hearing closed.

**135-01-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3" northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

**359-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.

SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.

PREMISES AFFECTED – 5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Block 5649, Lot 38, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Nora Martin.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

**395-04-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah, owner; Meyer Undorfer, lessee.

SUBJECT – Application April 3, 2012 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on November 1, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on November 1, 2009; waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 1232 54<sup>th</sup> Street, southwest side 242'6" southeast of the intersection formed by 54<sup>th</sup> Street and 12<sup>th</sup> Avenue, Block 5676, Lot 17, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for decision, hearing closed.

**128-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Loy 31, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

**45-07-A**

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application July 20, 2011 – Extension of time to complete construction, which expired on July 10, 2011, in accordance with a previously approved common law vested rights application for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19<sup>th</sup> Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of a two-story mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on January 10, 2012, after due notice by publication in *The City*

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*Record*, with continued hearings on February 14, 2012 and March 27, 2012, and then to decision on May 1, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the west side of East 19<sup>th</sup> Street, between Avenue N and Avenue O, and has a lot area of 3,500 sq. ft.; and

WHEREAS, the owner proposes to construct a two-story mixed-use residential/community facility building with a floor area of 5,500 sq. ft. (1.49 FAR) and a height of 39'-2"; and

WHEREAS, the subject site was formerly located within an R6 zoning district; and

WHEREAS, the proposed building complies with the former zoning district parameters; and

WHEREAS, however, on April 5, 2006 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the "Midwood Rezoning," which rezoned the site to R4-1; and

WHEREAS, the building does not comply with the R4-1 district parameters as to the maximum permitted floor area, FAR, or height; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on July 10, 2007, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant four years to complete construction and obtain a certificate of occupancy, which expired on July 10, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the building was not completed by the stipulated date due to financing delays, including the contractor for the project going out of business; and

WHEREAS, the applicant submitted evidence of its attempts to obtain a new contractor and its efforts to market the property; and

WHEREAS, at hearing, the Board directed the applicant to repair the fence at the site and provide evidence of general site cleanup; and

WHEREAS, in response, the applicant submitted photographs reflecting that the fence has been repaired and the site has been cleaned up; and

WHEREAS, the Board has reviewed the evidence and determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction; and

*Therefore it is Resolved* that this application to renew

DOB Permit No. 302041261, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for two years from the date of this resolution, to expire on May 1, 2014.

Adopted by the Board of Standards and Appeals, May 1, 2012.

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## 122-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mitchell Pacifico, owner.

SUBJECT – Application August 23, 2011 – Proposed construction of a one family dwelling located partially within the bed of a mapped street, contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 5 Bement Avenue, southeast corner of Bement Avenue and Richmond Terrace, Block 150, Lot 4, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 22, 2012, acting on Department of Buildings Application No. 520070299, reads in pertinent part:

Proposed construction of a one family residence building partially within the bed of a mapped street is contrary to General City Law and not permitted.

Therefore referred to the Board of Standards and Appeals for approval; and

WHEREAS, this is an application to permit the construction of a single-family home in the bed of a mapped street, Richmond Terrace, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in the *City Record*, and then to closure and decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application, with conditions; and

WHEREAS, by letter dated April 3, 2012, the Fire Department states that it has no objection to the proposal; and

WHEREAS, by letter dated October 14, 2011, the Department of Environmental Protection ("DEP") states that

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the applicant submitted a site plan which shows the 100'-0" total width of Richmond Terrace, from which approximately 49'-0" in the narrowest part of the street will be available for the existing 12-inch diameter and 20-inch diameter City water mains and the 66-inch diameter interceptor sewer, also for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewers, 48-inch diameter storm sewer, and 84-inch diameter interceptor sewer; and

WHEREAS, DEP further states that the site plan shows the 80'-0" total width of Bement Avenue, 60'-0" of which will be available for the existing 12-inch diameter sanitary sewer, 4'-0" by 2'-4" storm sewer and an eight-inch diameter City water main, also for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer, 48-inch diameter storm sewer and 4'-0" by 2'-6" storm sewer; and

WHEREAS, DEP states that, based upon the above, it has no objection to the subject proposal; and

WHEREAS, by letter dated December 23, 2011, the Department of Transportation ("DOT") states that the subject lot is not currently included in the agency's Capital Improvement Program, but requires that any construction that may involve sidewalks must conform to the standards set by the Americans with Disabilities Act ("ADA"); and

WHEREAS, in response, the applicant states that any construction that involves sidewalks will conform to ADA standards; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated February 22, 2012, acting on Department of Buildings Application No. 520070299, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 23, 2012"- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT any construction that involves sidewalks will conform to ADA standards;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May

1, 2012.

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## 161-11-A

APPLICANT – Quinn McCabe, LLP, for Britton Property, Inc., owner.

SUBJECT – Application October 14, 2011 – Appeal seeking to vacate a Stop Work Order and rescind revocation of building permits issued for failure to obtain authorization from the adjacent property owner. R7B Zoning District.

PREMISES AFFECTED – 82-20 Britton Avenue, east side of Britton Avenue between Broadway and Layton Street, Block 1517, Lot 3, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Christopher P. McCabe and Britton Properties.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated September 19, 2011 by the Queens Borough Commissioner of the Department of Buildings ("DOB") (the "Final Determination"), with respect to DOB Application No. 410067653; and

WHEREAS, the Final Determination states, in pertinent part:

By letter dated December 6, 2010, pursuant to Section 28-104.2.10 and 28-105.10 of the Administrative Code of the City of New York ("AC") the APPROVAL(S) AND PERMIT(S) IN CONNECTION WITH THE ABOVE-REFERENCED APPLICATION WERE REVOKED.

As of this date, the Department has not received sufficient information to demonstrate that the approval(s) and permit(s) should not be revoked; and

WHEREAS, a public hearing was held on this appeal on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on May 1, 2012; and

WHEREAS, the site had visits by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the appeal is filed on behalf of the property owner who contends that DOB's denial was erroneous (the "Appellant"); and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the adjacent property owner at 82-22 Britton Avenue (the "Neighbor" or "Neighbors") has provided written and oral testimony in opposition to the appeal; and

WHEREAS, the subject site (the "Site") is located on the

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east side of Britton Avenue, between Broadway and Layton Street, within an R7B zoning district; and

WHEREAS, the Site is occupied by a six-story mixed-use commercial/residential building (the "Building") and its southern side yard abuts the Neighbors' northern side yard (the "Side Yard"); and

WHEREAS, the Appellant contests DOB's decision (1) to revoke Permit No. 410067653 (the "Permit") to construct the Building which was completed at the time of the revocation, (2) to issue objections related to the construction, which include the requirement that the Appellant obtain the Neighbor's consent in order to remove the objections, and (3) to issue a stop work order against the fully completed construction based upon an alleged trespass upon the Neighbor's property; and

WHEREAS, the Appellant requests that DOB (1) rescind the permit revocation, (2) vacate its objections, and (3) vacate the stop work order because: the Appellant claims it did not trespass upon the Neighbor's property because the Neighbor provided written and oral consent to use the side yard; the stop work order was improper where the Building was completed and there was no work being performed at the time the stop work order was issued; even if Appellant trespassed upon the Neighbor's property, DOB's actions are contrary to the authority set forth at BSA Cal. Nos. 152-08-A and 11-08-A (23<sup>rd</sup> Street, Manhattan, the "High Line Case") because the Building's foundation and the Building were completed and because neither the site nor the Neighbor's property rely upon shoring for support; DOB has discretion to apply alternate penalties more appropriate to the alleged violation; and the Neighbors should be stopped from seeking relief due to their failure to timely complain about the shoring until after it was completed; and

## PROCEDURAL HISTORY

WHEREAS, the Appellant purchased the site on February 12, 2008; and

WHEREAS, on March 3, 2008, the Appellant and the Neighbor entered into an agreement entitled the "Side Yard Agreement," which states:

This is an agreement between the owner of 82-22 Britton Ave and the owner of 82-20 Britton Ave in Elmhurst that the owner of 82-22 would allow the owner of 82-20 to use their side yard including fencing their side yard during the construction period and at the completion of the construction the owner of 82-20 will pave a new concrete side yard for the owner of 82-22; and

WHEREAS, in March 2008, DOB approved the shoring drawings; and

WHEREAS, on May 12, 2008, DOB issued the Permit to perform the work included in the shoring drawings; and

WHEREAS, as to the shoring, the Appellant states that the shoring drawings identify shoring that was designed to support the side yard between the Site and the Neighbor's property; and

WHEREAS, the Appellant states that shoring comprises steel I-beam soldier piles and wood lagging and that the soldier beams extend into the Side Yard by a maximum of six inches

at each soldier pile below grade level; and

WHEREAS, in August 2008, the Appellant represents that the foundation was installed and the shoring no longer provided any support for the Building or for the Side Yard, rather the lateral forces of the soil under the Side Yard were transferred to the foundation wall of the Building; and

WHEREAS, the Appellant asserts that the shoring became a vestige that served and continues to serve no useful purpose; and

WHEREAS, the Appellant states that in December 2009, the Neighbor allegedly made a complaint to DOB asserting that shoring trespassed into the Side Yard; and

WHEREAS, on March 18, 2010, DOB issued an intent to revoke the permit and objections; the objections contain two items, both of which relate to the extension of shoring onto the Neighbor's property, without the consent of the owner; the objections state as follows:

The Shoring detail submitted by the applicant on Plan #S-4 indicates the location of the soldier piles to be placed beyond the property line and also the soil/structure on the adjacent property will be disturbed which needs to be protected per B.C. 1031.

Any work on the adjoining premises requires permission/consent to enter the owner of the adjoining property as per B.C. 27-1026; and

WHEREAS, the Appellant states that at the time the intent to revoke the permit and objections were issued, the Building was completed; the Appellant submitted a photograph of the completed Building; and

WHEREAS, on December 6, 2010, DOB revoked the Permit after several meetings between the Appellant and DOB; and

WHEREAS, the Appellant's structural engineering consultant states that the shoring cannot be safely removed because such removal would cause damage to the site and the Neighbor's property; and

WHEREAS, in 2010, the Appellant commenced an Article 78 proceeding against DOB entitled In the Matter of Britton Property, Inc. v. New York City Department of Buildings (Supreme Court, Queens County) (Index No. 292250/10) in which Appellant sought an order requiring DOB to rescind the revocation of the Permit and the stop work order; and

WHEREAS, by order dated May 6, 2011, the court denied Appellant's case based upon the Appellant's failure to exhaust administrative remedies; and

WHEREAS, the Neighbors commenced an action against the Appellant in 2009, Amelia Arcamone-Makinano, et al., v. Britton Property, Inc. et al. (Supreme Court, Queens County) (Index No. 32984/09) in which they asserted causes of action against the Appellant for (1) injunctive relief ordering Appellant to remove the shoring, enjoining any trespass on the Neighbor's property, authorizing Neighbor to remove temporary fence, and enjoining Appellant from seeking a Certificate of Occupancy for the Building or obtaining permits for the Building; (2) ejectment seeking the removal of the shoring; (3) recourse for the alleged diminution of value of the

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Neighbors' property; and (4) trespass; and

WHEREAS, on December 11, 2009, the Neighbor obtained a temporary restraining order against the Appellant which the court discontinued by order dated February 4, 2010, in which the court expressly discontinued the prior order but maintained that the Appellant not trespass on the Neighbor's property; and

WHEREAS, on February 22, 2010, the court issued a preliminary injunction which (1) enjoins the Appellant from trespassing on the Neighbors' property, (2) requires the removal of a construction fence on the Neighbors' property; and (3) restricts the Appellant from transferring ownership of the Building or individual units during the pendency of the Supreme Court action; and

## THE APPELLANT'S POSITION

### - There is No Legal Basis for the Stop Work Order

WHEREAS, the Appellant asserts that there is not any legal basis for DOB to issue a stop work order against the entire project; and

WHEREAS, the Appellant cites to Building Code (BC) § 26-118 (*General Provisions, Stop Work notices and orders*) which provides that DOB may issue a stop work order only when work is being performed in violation of the provisions of any law, rule, or regulation enforceable by DOB; and

WHEREAS, the Appellant states that no work was being performed "in violation of the provisions of any law, rule or regulation enforceable by" DOB because the shoring work had already been completed and was buried in the foundation of the Building; and

WHEREAS, accordingly, the Appellant asserts that DOB was not authorized by BC § 26-118 to issue the stop work order and objections with respect to any work at the site; and

WHEREAS, the Appellant asserts that because the shoring and construction on the Building were complete, the stop work order, objections, and revocation were not issued for work that was "being performed," but rather for work that had already been performed; and

WHEREAS, the Appellant cites to its structural engineering consultant's affidavit that (1) the project no longer relies upon the shoring; (2) the shoring was performed competently and safely; and (3) the lateral forces exerted by the soil under the Neighbor's property are supported entirely by the Building's foundation wall and not by the shoring and, as such, the shoring is no longer useful; and

### - The Neighbors Granted Consent

WHEREAS, the Appellant asserts that the Side Yard Agreement and purported oral consent reflects the Neighbor's consent for the shoring; and

WHEREAS, the Appellant asserts that the Side Yard Agreement is broad and does not restrict the installation of the shoring; and

WHEREAS, the Appellant asserts that (1) DOB's claim that it does not have the authority to interpret the Side Yard Agreement is without any merit since no interpretation is necessary and (2) the existence of litigation between the parties does not preclude the Board from determining that consent was granted to the Appellant with respect to the use of the Side

Yard based upon the language of the Side Yard Agreement; and

WHEREAS, the Appellant asserts that DOB improperly interpreted the Side Yard Agreement by determining that the Side Yard Agreement did not constitute one of the forms of written consent that DOB accepts in cases where work is to be performed on an adjacent site; and

WHEREAS, the Appellant asserts that by determining that the Side Yard Agreement does not fit within DOB's understanding of an acceptable form of consent, DOB interpreted the Side Yard Agreement in favor of the Neighbors; and

WHEREAS, in response to DOB's assertion that its actions reflect its interest in maintaining the status quo, the Appellant states that the status quo is not maintained since all work is complete and the effect of the revocation of the permit and issuance of objections is that the Appellant is subject to reduced leverage in negotiations with the Neighbors; and

WHEREAS, the Appellant asserts that DOB's rejection of the Side Yard Agreement is improper given that DOB does not provide guidance to building permit applicants as to what constitutes consent to perform necessary shoring or underpinning work under an adjacent property; and

WHEREAS, the Appellant asserts that DOB's stated policy to only accept a signed Plan/Work Application (PW1) form or a letter or other written statement authorizing the applicant to file the application is not codified anywhere; and

### - Prior Board Authority and DOB Actions for Similar Projects

WHEREAS, the Appellant asserts that DOB's actions are arbitrary and capricious as they are contrary to the Board's decisions and DOB's own actions in several cases; and

WHEREAS, the Appellant cites to the condition in the High Line Case that the new building no longer relied upon the earth retention work for support because the lateral forces exerted by the soils under the adjacent site were supported entirely by the new foundation wall and not the earth retention work and the removal of the earth retention system would have damaged the adjacent building; and

WHEREAS, the Appellant notes that in the High Line Case, the property owner was permitted to proceed despite the fact that he had not obtained consent from the adjacent neighbor for the earth retention work; and

WHEREAS, the Appellant asserts that there is not a distinction between the High Line Case and the subject case where shoring was for an earth retention system and that once the Building's foundation was installed, the shoring no longer provided any support for the Building or for the side yard of the Neighbor's site, or the Neighbor's home; and

WHEREAS, the Appellant also cites to a DOB approval at 238 West 74<sup>th</sup> Street, Manhattan, in which the property owner underpinned the adjacent site without the consent of the adjacent property owner and DOB issued objections to the property owner based upon the alleged failure to obtain the adjacent owner's consent; and

WHEREAS, the Appellant asserts that in the West 74<sup>th</sup> Street case, DOB permitted the property owner to continue construction and only precluded the property owner from



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installing any further encroachments on the adjacent site; and

WHEREAS, the Appellant also cites to a DOB approval at 755 Bedford Avenue, Brooklyn where DOB denied the adjacent neighbor's request to revoke permits due to damage during construction; and

WHEREAS, the Appellant states that pursuant to BC § 28-207.2 (*Criminal Judicial Proceedings, Stop work orders*), DOB does not have the authority to issue the stop work order because the BC provides discretion that "[w]henver the commissioner finds that any building work is being executed in violation of the provisions of this code . . . the commissioner or his or her authorized representative may issue a stop work order;" and

WHEREAS, the Appellant reads the text to say that an issuance of a stop work order is only proper where work is being performed in violation of the Code and all of its work had concluded; and

WHEREAS, the Appellant asserts that the High Line Case is on point because the only reason the two separate permits (one for foundation and one for the building) were relevant there was because the building had only been completed to the foundation and the Board determined that the prospective work could proceed; the Appellant also asserts that the Board held that the work performed under the new building permit could proceed because no additional work was required under the shoring permit and because the work to be performed under the new building permit was not reliant upon the shoring work; and

- DOB has Discretion to Apply Alternative Penalties

WHEREAS, the Appellant asserts that DOB has discretion to apply alternative penalties which are more appropriate to the severity of the Appellant's violations; and

WHEREAS, specifically, pursuant to BC §§ 26-116 (*General Provisions, Contents of notices and orders*) and 26-125 (*General Provisions, Violations of building laws: punishments, penalties; penalty*) DOB has the discretion to punish an alleged violation by requesting "the corporation counsel to institute legal proceedings to restrain, correct or abate such violation" and to punish any violations by a fine or through civil action; and

WHEREAS, the Appellant asserts that DOB would be within its discretion to require Appellant to pay a fine with respect to violations; additionally, if it is found that the Appellant did trespass on the Neighbors' site, then the Neighbors are entitled to pursue their claim against the Appellant directly for any damages; and

WHEREAS, the Appellant notes that the Neighbor already commenced an action against the Appellant seeking damages for trespass; and

WHEREAS, the Appellant asserts that there is no reason for DOB to issue the stop work order and objections in an effort to enforce the Neighbor's rights, rather than issuing a fine against the Appellant and allowing the parties to resolve their respective claims in court; and

- Neighbors Complaint was Untimely and They Should be Estopped from Seeking Relief

WHEREAS, the Appellant asserts that the Neighbors did

not file a complaint regarding the shoring until December 2009, which was approximately 19 months after the shoring was completed and after the Building was completed; and

WHEREAS, the Appellant cites to the doctrine of laches, citing to the Appellate Division which stated "where neglect in promptly asserting a claim for relief causes prejudice to one's adversary, such neglect operates as a bar to a remedy" Save the Pine Bush v. New York State Dept of Env'tl Conservation, 289 A.D.2d 562 (N.Y. 3<sup>rd</sup> Dept 2001) citing Matter of Stockdale v Hughes, 189 A.D. 2d 1065, 1067 (N.Y. 3<sup>rd</sup> Dept 1993); and

WHEREAS, the Appellant asserts that the Neighbors' delay in issuing their complaint until construction was complete eliminates the possibility of redesigning the Building to limit the earth retention work to the Appellant's property; and

- Equitable Relief

WHEREAS, the Appellant asserts that there are unique circumstances to the matter which require that relief be granted in equity because the Appellant asserts that an administrative agency's determination can be overturned where it is so "disproportionate to the offense as to be shocking to one's sense of fairness," citing Featherstone v. Franco, 95 N.Y. 2d 550, 550 (N.Y. 2000); and

WHEREAS, the Appellant asserts that if the appeal is not granted, it will be unable to obtain a Certificate of Occupancy and the Building will stand vacant which is a result that is disproportionate to the alleged offense and would also be a detriment to the community; and

WHEREAS, the Appellant cites to Charter § 666(7) for the Board's authority to vary or modify a rule or regulation when there are practical difficulties or unnecessary hardship caused by carrying out the strict letter of the law; and

WHEREAS, the Appellant asserts that it should be able to apply for a Temporary Certificate of Occupancy or a Certificate of Occupancy; and

## DOB'S POSITION

- Building Code Non-Compliance

WHEREAS, DOB states that the building application which includes shoring of the Neighbors' home without consent from the Neighbors is contrary to the terms of BC §§ 27-140 (*Approval of Plans, Applicant*), 27-142 (*Approval of Plans, Applicant's Statement*) and 27-151 (*Permits, Applicant*) and the associated permit was properly revoked because the construction documents propose construction on the Neighbors' property without the Neighbors' consent; and

WHEREAS, DOB states that BC § 27-140 requires that all applications be accompanied by a signed statement of the owner stating that the applicant is authorized to make the application and that a signed statement by the applicant stating that he or she is authorized to make the application be submitted with the application; and

WHEREAS, DOB states that it received a letter dated December 15, 2009 from the Neighbors which stated that work under the Permit improperly encroached on their property; and

WHEREAS, DOB states that drawings S-1 and S-4 associated with the Permit show shoring consisting of steel I-beams and timber lagging on both adjoining properties but that the Permit application form PW1 is only signed by the

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Appellant and not by the Neighbors; and

- Memorandum and Case Law

WHEREAS, DOB asserts that its permit revocation is consistent with a DOB memorandum dated May 8, 1984 (the "1984 Memo") which states that when an owner notifies DOB in writing that it did not authorize the filing of an application, DOB may revoke the approval and permit regardless of the status of the work; the purpose and procedure is to stop all ongoing work in order to preserve the conditions at the time the owner alerts DOB that it did not agree to the work while the parties attempt to resolve the dispute; and

WHEREAS, DOB cites to the Board's decision in BSA Cal. No. 480-83-A, which led to the Bun & Burger v. New York Dept of Buildings, 111 A.D.2d 140 (1<sup>st</sup> Dept 1985) litigation and which found that until owner's authorization is granted, DOB can find that the permit must be revoked because the Code's requirement for authorization has not been satisfied; and

WHEREAS, in the cited case, DOB notes that the Board also stated that DOB may properly revoke the building permit when there is a dispute over the right to perform work and that DOB should defer to the courts for an adjudication of the parties' rights; and

- The Side Yard Agreement

WHEREAS, DOB states that it does not have authority to interpret private agreements and cannot treat the Side yard Agreement as an expression of consent for the permitted work under the Administrative Code; and

WHEREAS, DOB states that it is the courts' role to interpret the agreement and there has not been a determination yet about whether there was consent to the permitted work in accordance with the Code; and

WHEREAS, DOB asserts that applicants who perform construction without an owner's consent to do the work proceed at their own risk and cannot fault DOB's filing procedures, which allow for a single application for work on both sides of a property line, for failure to comply with the Administrative Code; and

- Prior Board Cases and Other Underpinning Cases

WHEREAS, DOB distinguishes the High Line Case from the subject case and finds that the Board's decision in the High Line Case does not control; and

WHEREAS, DOB finds that in the High Line Case, the appellant challenged DOB's issuance of stop work orders under a new building permit and a shoring permit after DOB received a written complaint that the appellant performed shoring work pursuant to a shoring permit at the adjacent site without permission of the adjacent owner; and

WHEREAS, DOB states that the Board upheld the stop work order against the shoring permit given the absence of the owner's consent, but determined that the stop work order under the new building permit was improper; and

WHEREAS, DOB notes that in the High Line Case, the Board found that DOB's imposition of the stop work order was inappropriate because (1) the new building permit was separate from the shoring permit; (2) the new building permit was not structurally dependent on the shoring work; and (3) the work

under the new building permit was located entirely on the appellant's property and the adjacent owner's consent was not required for its performance; and

WHEREAS, DOB states that the High Line Case can be distinguished from the subject case because in the subject case, the new building work and shoring work are under a single permit and the new building work is not located solely on the Appellant's property; and

WHEREAS, DOB states that the distinction between the separate permits in the High Line Case and the single permit in the subject case is a meaningful one; and

WHEREAS, in response to the Board's questions at hearing, DOB provided additional testimony on distinctions between the subject case and other claims of underpinning without consent; and

WHEREAS, as to 238 West 74<sup>th</sup> Street, Manhattan, DOB states that the project design initially proposed work on the neighbor's property and then was amended to relocate all work within the property lines; and

WHEREAS, DOB states that under the revised plans, the owner of 238 West 74<sup>th</sup> Street satisfied all applicable laws without reliance on work performed on the neighbor's property and, accordingly, DOB could sign off on the work without concern that doing so might sanction a trespass; and

WHEREAS, DOB states that in the subject case there has not been a change in the design and the work proposed in the construction documents relies on shoring that was mandated by the Code and performed on the Neighbors' property allegedly without consent; and

WHEREAS, DOB states that it cannot approve shoring work if there is a reasonable risk or likelihood that it is erroneously approving work that unlawfully encroaches on the Neighbors' property; and

WHEREAS, as to 3585 Greystone Avenue, Bronx, DOB distinguishes it from the subject case in that it states that it did not find a written complaint in its records from the neighbor; and

WHEREAS, as to 123 87<sup>th</sup> Street, Brooklyn (BSA Cal. No. 221-10-A), DOB states that it raised an objection to the application upon receipt of the neighbor's complaint and a court determination that there was an encroachment onto the adjacent property; and

WHEREAS, further, in 87<sup>th</sup> Street, DOB states that it advised the owner that the objection would not be removed until either the court's findings were overturned or the encroachment was removed, a position it finds to be consistent with its position in the subject case; and

WHEREAS, in response to the Board's inquiry about why DOB did not merely issue violations instead of revoking the permit, DOB states that the Appellant would have a defense in pointing out that the permit expressly authorizes that work; and

WHEREAS, DOB cites to BC § 27-1032 which requires that the sides of all excavations five feet or greater in depth or height measured from the level of the adjacent ground surface to the deepest point of the excavation must be protected and maintained by shoring, bracing, sheeting, sheet piling or by other retaining structures; further, the required shoring must be

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indicated on the approved plans, the shoring work must be performed in accordance with the plans and must be signed off by DOB in order for a new building to comply with the Code; and

WHEREAS, DOB states that the shoring work is represented on the approved new building plans and those plans cannot now be amended to exclude the shoring work for the purpose of proceeding with work solely on the Appellant's property in order to circumvent the owner authorization requirement; and

WHEREAS, DOB states that it does not have the power to grant equitable relief by judging a complaint of lack of authorization to be untimely or a neighbor's refusal to grant consent to be unreasonable; and

WHEREAS, further, DOB states that it does not have the legal authority to waive the requirement for authorization based on an equitable determination; and

WHEREAS, in response to the Board's inquiry about what form of evidence of owner's authorization DOB accepts to demonstrate compliance with the applicable Administrative Code provisions, DOB states that it accepts (1) the adjacent owner's signature added to the PW1: Plan/Work Application form for the new building permit or (2) a letter or other written statement authorizing the applicant to file the application; and

WHEREAS, DOB adds that the adjacent owner can also specify that authority is given only for work proposed in the application that is to be performed on the neighbor's property; and

WHEREAS, in the alternate, DOB states that a separate PW1 for shoring or underpinning may be signed only by the adjacent owner and filed by the applicant on the adjacent owner's property; and

WHEREAS, DOB states that the subject application is flawed because it did not include a signature, letter or other statement, or a separate PW1 and therefore was not properly authorized in accordance with BC §§ 27-140, 27-142, and 27-151; and

WHEREAS, in response to the Board's question about whether it was in fact interpreting the Side Yard Agreement submitted by the Appellant even though its policy is that it does not interpret private agreements for the purpose of determining a party's right to perform construction work on a neighbor's property, DOB states that it has not interpreted the meaning of the Side Yard Agreement but rather determined that the agreement is not a signed statement of the owner saying that the applicant is authorized to make the application; and

WHEREAS, DOB states that a court may determine that the Side Yard Agreement is an expression of the Neighbors' consent but it is beyond DOB's jurisdiction to make such a finding; and

## THE APPELLANT'S SUPPLEMENTAL RESPONSE

WHEREAS, as to the 1984 Memo, the Appellant distinguishes the facts in that the memo addresses authorization in a landlord-tenant context which is not applicable to the subject facts; and

WHEREAS, further, the Appellant finds that the memo identifies a policy pursuant to which DOB would "stop all ongoing work in order to preserve the conditions [of the

premises]" and which is irrelevant since there was not any ongoing work at the site to stop as it was 100 percent complete; and

WHEREAS, the Appellant also disagrees with DOB's reliance on Bun & Burger because that case addresses ongoing work performed by a lessee without the fee owner's permission; and

WHEREAS, in response to the Neighbors' assertion that the Preliminary Injunction reflects a decision on the encroachment question, the Appellant states that it does not constitute a final determination as to whether the Appellant had consent to install the shoring partially under the Neighbors' property; and

WHEREAS, the Appellant asserts that the Preliminary Injunction granted only the following relief: (1) to enjoin the Appellant from trespassing on the Neighbors' property; (2) to remove the construction fence on the Neighbors' property; and (3) to restrict the Appellant from transferring the Building or its individual units during the pendency of the action in court; and

WHEREAS, the Appellant notes that the court expressly refused to grant the portion of the Neighbors' motion for a preliminary injunction seeking the removal of the I-beams and identified such relief as "the ultimate relief sought;" and

WHEREAS, the Appellant states that the issues before DOB and before the court are distinct and that remedies in the two forums are not reliant on each other; and

WHEREAS, the Appellant asserts that DOB fails to distinguish the West 74<sup>th</sup> Street project where it is not disputed that unauthorized underpinning was installed under the adjacent building and never removed; and

WHEREAS, the Appellant also asserts that DOB fails to distinguish the Greystone Avenue project which the Appellant finds to also involve an adjacent owner's complaint about unauthorized underpinning and which did not result in the revocation of the permit or the issuance of a stop work order; and

WHEREAS, the Appellant also distinguishes the 87<sup>th</sup> Street case in that it began as a zoning dispute and DOB's refusal to approve the owner's application only arose after the court determined that a trespass existed; and

WHEREAS, the Appellant suggests that DOB modify its PW1 form to include a checkbox to indicate whether shoring work will be performed on a neighbor's property; and

## THE OPPOSITION'S ARGUMENTS

### - Absence of Authorization

WHEREAS, the Neighbor asserts that DOB acted prudently in stopping construction in order to protect public safety; and

WHEREAS, the Neighbor represents that the Appellant falsely states that the Neighbor consented orally and in writing to the encroachment on their property; and

WHEREAS, the Neighbor states that the approved plans misrepresented the facts by falsely stating the Appellant had consent to encroach; and

### - The Encroachment is Not *de minimis*

WHEREAS, the Neighbor contests the Appellant's claim that encroachment only extends approximately 6 inches into the side yard and states that based on a survey dated December

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9, 2009 which shows one beam crossing the property line by 7.75 inches the Appellant's prior attorney conceded to the encroachment; and

WHEREAS, further, the Neighbor states that a court-ordered inspection resulted in an October 20, 2011 survey which showed that 18 underground I-beams cross the property line by approximately 11 inches along a 100-ft. span; and

- Prior Board Cases

WHEREAS, the Neighbor states that the Board has a history of denying appeals challenging DOB decisions requiring owner authorization; and

WHEREAS, specifically, the Neighbor addresses the High Line Case and decides that it is not analogous to the subject case because in the subject case, the Appellant, while working with one permit, constructed on the Neighbors' property without consent, causing a continuous trespass and compromising the foundation of the Neighbors' home as a result of the unlawful taking of their property; and

WHEREAS, the Neighbor states that issues of permanent and significant encroachment and damages to soil and structure which were to be protected during shoring, were not raised in the High Line Case; and

WHEREAS, the Neighbor states that contrary to the Appellant's claim, they did not comply with BC § 27-1031 (requiring protection of adjoining structures during excavation) or with BC § 27-1026, in that the foundation wall for the adjacent property was left exposed during the shoring and is currently exposed; and

WHEREAS, the Neighbor provided evidence such as photographs and affidavits from construction consultants to support its claim that there was damage to its property and home associated with the construction of the Building; and

WHEREAS, additionally, the Neighbor cites to (1) BSA Cal. No. 221-10-A (123 87th Street, Brooklyn) as a decision that concerns owner's authorization for completed construction where there was a court action on the matter, such as the subject case; (2) BSA Cal. No. 154-10-A (540 Bedford Avenue, Brooklyn) which discusses the requirement to reiterate owner authorization throughout construction to safeguard against completing construction without owner's authority and in which the Board approved DOB's policy of maintaining the status quo pending resolution of the dispute; and (3) BSA Cal. No. 132-10-A (105 West 72nd Street, Manhattan) which addressed the requirement for owner authorization as important to public safety and in which the Board referenced the Bun & Burger decision, which the Neighbor finds to support the arguments for denying the subject application; and

- Court Actions

WHEREAS, the Neighbor asserts that in the litigation associated with this case, the Supreme Court acknowledged that remedial work may be necessary on both properties if removal of the I-beams takes place, and prohibited the Appellant from transferring its property during the pendency of the action; the Appellate Division upheld the injunction issued by the Supreme Court, finding that the Neighbors "demonstrated a likelihood of success on the merits of their trespass cause of action;" and

WHEREAS, the Neighbor asserts that a report from the

Appellant's engineer submitted during litigation noted that the encroaching shoring beams "can and should be removed after all foundation work is completed;" thus, the Neighbors assert that DOB is correct to maintain the status quo until the matter is settled, since there is a possibility of removing the I-beams; and

WHEREAS, the Neighbor asserts that the Board is collaterally estopped from hearing this application because the issues have been adjudicated in court; and

## CONCLUSION

WHEREAS, the Board recognizes that the BC § 27-1031 (*Excavation Operations, General Requirements*) requires that property owners shore adjacent sites and buildings during construction; and

WHEREAS, the Board looked to BC §§ 27-1026 (*Protection of Adjoining Property, General*) and 27-1031 which serve as the basis for DOB's actions being appealed and finds that neither sets forth the requirement for an adjacent owner's authorization to install shoring as § 27-1031 requires shoring and underpinning of adjacent properties (which was completed) and § 27-1026 requires permission to enter the adjacent property to inspect during construction and demolition; and

WHEREAS, DOB asserts that the Appellant did not comply with the owner's authorization requirement of BC §§ 27-140 and 27-142; however, the Board notes that BC § 27-140 requires the applicant to provide authorization from the owner – a signed document stating that the applicant is authorized to make the application and does not speak to instances where there is shoring work on an adjacent site with a different owner; BC § 27-142 states that an applicant must provide a signed statement that they are authorized to make an application, but again does not speak to instances where there is shoring work on an adjacent site with a different owner; and

WHEREAS, accordingly, the Board does not find that any of the Code provisions that DOB cites give direction to property owners in the context of shoring an adjacent property or direct DOB to revoke permits and issue stop work orders when there is a question about authorization; and

WHEREAS, the Board also notes that the PW1 form does not provide any direction on how to ensure that multiple authorizations are obtained when multiple owners are involved or when work is performed on multiple zoning lots; the PW1 form only contemplates work to be performed on the zoning lot under the control of the applicant; and

WHEREAS, the Board distinguishes the facts contemplated in the 1984 Memo which it finds pertains to lessees and property owners (as was the case in Bun & Burger); the Board understands DOB's position that it is being consistent with the memo, but the Board does not find any basis for a requirement to follow a memo that is so factually distinct from the subject matter; and

WHEREAS, the Board does not find that the facts of Bun & Burger or the 1984 Memo are relevant to the subject facts since they involve disputes over who the single authorizing party is on one site, do not involve the common construction practice of shoring, and do not involve adjacent properties; all of those facts are relevant to the subject case; and

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WHEREAS, the Board notes that the Neighbors' consent is not required for any remaining work to be performed, as the Appellant represents that all work is complete; and

WHEREAS, even if the Board were to accept DOB's assertion that it has not interpreted the Side Yard Agreement but has simply determined that the document is not among the documents it accepts, the Board is concerned that there is no codified practice or instruction about what documents would be sufficient and the construction application does not provide a place for the applicant to acknowledge an encroachment; and

WHEREAS, accordingly, the Board does not see the basis for DOB's decision to revoke the permits and issue a stop work order, which are both discretionary actions; and

WHEREAS, the Board asserts that given the density of New York City, the shoring requirement is carried out throughout the City with great frequency; and

WHEREAS, the Board does agree with DOB that there is a public policy goal for requiring shoring and a public policy goal for requiring authorization to implement shoring on an adjacent property; and

WHEREAS, however, the Board finds that there is not currently a clear mechanism for property owners to establish owner's authorization; and

WHEREAS, the Board does not take a position as to the meaning of the Side Yard Agreement and leaves that interpretation to the courts; and

WHEREAS, the Board acknowledges DOB's practice of stopping construction when there is a complaint from a neighbor about lack of authorization, but it does not see that in this instance where work has already been completed that issuing a stop work order is a necessary remedy; and

WHEREAS, the Board supports the general principle of preserving the status quo so that no further damages are incurred, but, in the subject case, the construction has all been performed and the court has ordered that there not be any transfer in the Building's ownership, so the Board does not see the basis for exercising discretion to completely halt the project; and

WHEREAS, the Board finds that an interim resolution, while the court determines the question of authorization and while the Appellant is precluded from transferring the Building's ownership, is more reasonable than DOB's actions; and

WHEREAS, the Board requested that DOB provide examples of forms of owner's authorization that are accepted and DOB did not provide any examples; and

WHEREAS, the Board agrees with the Appellant that there is not any distinction between the 74<sup>th</sup> Street example and the subject facts as both involve situations where the encroachment on the adjacent site remains; and

WHEREAS, the Board does not see any basis to allow an applicant to change construction drawings to reflect a condition other than what is built in order to resolve the authorization question, as was done in 74<sup>th</sup> Street; the Board finds such practice to perpetuate a fiction; and

WHEREAS, further, the Board notes that DOB will not allow the Appellant to revise the drawings or file a separate shoring and new building permit; and

WHEREAS, the Board finds that DOB has the discretion not to issue a stop work order, particularly when there is no work being performed and has the discretion not to revoke the permit, both of which are more reasonable actions given the facts; and

WHEREAS, the Board finds that (1) DOB does not have a practice that puts property owners on notice for how to effectuate authorization for shoring cases; (2) the 1984 Memo is not applicable to the facts and DOB is not governed by it; (3) if DOB accepts other forms of owner's authorization beside the signature on the form, then it should be clear what is accepted so that it is not in the position of determining whether it is interpreting an agreement or rejecting it based on apparent flaws; and (4) if DOB's position is that it does not interpret agreements, then it should wait for the court to decide the meaning of the Side Yard Agreement before revoking the Permit; and

WHEREAS, the Board suggests that DOB establish a clear policy and procedure for construction work that requires either temporary or permanent shoring infrastructure on adjacent sites and to codify the form of consent that is required and acceptable to DOB; and

*Therefore it is Resolved* that the Board grants the appeal to the extent of reversing the permit revocation and stop work order which are based on an outstanding question of owner's authorization, but the Board does not direct DOB to eliminate its objections or to issue a Certificate of Occupancy.

Adopted by the Board of Standards and Appeals, May 1, 2012.

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## **162-11-A**

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

## **COMMUNITY BOARD #3M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for continued hearing.

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## **173-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Southside Manhattan View LLC, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction under the prior R4 zoning. R4-1 Zoning district.

PREMISES AFFECTED – 68-10 58<sup>th</sup> Avenue, south side of 58<sup>th</sup> Avenue, 80' east of intersection of 58<sup>th</sup> Avenue and

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Brown Place, Block 2777, Lot 11, Borough of Queens.

*Adjourned: P.M.*

**COMMUNITY BOARD #5Q**

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5,  
2012, at 10 A.M., for decision, hearing closed.

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**19-12-A**

APPLICANT – Goldman Harris LLC, for 38-30 28<sup>th</sup> Street,  
LLC, owner.

SUBJECT – Application January 30, 2012 – Appeal seeking  
a common law vested right to continue development  
commenced under the prior zoning district. M1-2/R5B/LIC  
zoning district

PREMISES AFFECTED – 38-30 28<sup>th</sup> Street, between 38<sup>th</sup>  
and 39<sup>th</sup> Avenues. Block 386, Lot 27. Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Vivien Krieger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5,  
2012, at 10 A.M., for decision, hearing closed.

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**41-12-A**

APPLICANT – Queen First Properties, LLC, for  
Mohammad Uddin, owner.

SUBJECT – Application February 15, 2012 – Appeal  
seeking a common law vested right to continue development  
commenced under the prior R6 Zoning District. R5A zoning  
district.

PREMISES AFFECTED – 112-26 38<sup>th</sup> Avenue, 225' from  
the corner of 112<sup>th</sup> Street and 38<sup>th</sup> Avenue. Block 1785, Lot  
10. Borough of Queens.

**COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: M. Mirza M. Rahman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5,  
2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, MAY 1, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**195-11-BZ**

**CEQR #12-BSA-055K**

APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.

SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2070 East 21<sup>st</sup> Street, west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**APPEARANCES –**

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 7, 2011, acting on Department of Buildings Application No. 320310230, reads in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b)
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage, which are contrary to ZR Section 23-141(b)
3. Proposed enlargement increases the degree of non-compliance of an existing building with respect to a side yard less than 5’-0”, which is contrary to ZR Section 23-461(a) & 23-48;
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio

(“FAR”), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on March 6, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,505 sq. ft. (0.60 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,505 sq. ft. (0.60 FAR) to 2,625 sq. ft. (1.05 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 44.5 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 55.5 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 2’-6 ½” (a minimum width of 5’-0” is required for each side yard) and to provide a side yard with a width of 5’-5 ½” along the southern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a study of FARs in the area which reflects that there are at least two homes within two blocks of the site in the subject R3-2 zoning district with FARs in excess of 1.0, and concludes that the proposed FAR is compatible with the neighborhood character; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the proposed bay windows on the south side of the home would provide sufficient clearance for automobiles driving to and from the parking space at the rear of the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that there will be at least six feet of clearance below each of the bay windows on the south side of the proposed home, which the applicant represents is sufficient clearance for passing automobiles; and

# MINUTES

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 20, 2012"-(10) sheets and "April 16, 2012"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,625 sq. ft. (1.05 FAR); an open space of 44.5 percent; lot coverage of 55.5 percent; a side yard with a minimum width of 2'-6 1/2" along the northern lot line; a side yard with a minimum width of 5'-5 1/2" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 1, 2012.

## 187-10-BZ

APPLICANT – Khalid M. Azam, Esq., owner.

SUBJECT – Application October 5, 2010 – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard zoning requirements (§23-462(c)). R6B zoning district.

PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Khalid M. Azam.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for decision, hearing closed.

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## 71-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to May 15, 2012, at 1:30 P.M., for continued hearing.

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## 169-11-BZ

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011 – Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14<sup>th</sup> Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5,



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# MINUTES

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2012, at 1:30 P.M., for decision, hearing closed.  
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## **187-11-BZ**

APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

### **COMMUNITY BOARD #3BK**

APPEARANCES –

For Applicant: Ron Mandel and Jack Freeman.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.  
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## **193-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.  
-----

## **40-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.

SUBJECT – Application February 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Global Health Clubs*). C2-1 zoning district.

PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Francis R. Angelino and Bob Calvo.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.  
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## **42-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for 158 West 27<sup>th</sup> Street, LLC, owner; 158 West 27<sup>th</sup> Fitness Group, LLC, lessee.

SUBJECT – Application February 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 zoning district.

PREMISES AFFECTED – 158 West 27<sup>th</sup> Street, located on the south side of 27<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.

### **COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 1:30 P.M., for continued hearing.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on April 24, 2012, under Calendar No. 206-10-A thru 210-10-A and printed in Volume 97, Bulletin Nos. 16-18, is hereby corrected to read as follows:

### 206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

**ACTION OF THE BOARD** – Applications granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated February 13, 2012, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966 read in pertinent part:

Proposed construction of a one family residence building within bed of a mapped street is contrary to General City Law 35 and not permitted; and

WHEREAS, this is an application to permit the proposed construction of five single-family homes located within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in the *City Record*, with continued hearings on February 28, 2012 and March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, New York State Assembly Member Michael J. Cusick provided written testimony in opposition to this application; and

WHEREAS, New York State Assembly Member Louis R. Tobacco provided written testimony in opposition to this application; and

WHEREAS, New York State Senator Andrew J. Lanza provided written testimony requesting that the Board review the environmental and transportation issues associated with this application; and

WHEREAS, United States Congress Member Michael G. Grimm provided written testimony in opposition to this application; and

WHEREAS, New Yorkers for Parks provided written testimony in opposition to this application; and

WHEREAS, representatives of the Richmondtown and Clarke Avenue Civic Association and the Grasmere Civic Association provided oral and written testimony in opposition to this application (collectively, the “Opposition”); and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposal is in a freshwater wetlands area; (2) an environmental assessment should be performed on the site; (3) the proposal could cause increased flooding in the area; (4) the applicant has not satisfied the findings pursuant to ZR § 72-21; (5) the proposal creates potential zoning non-compliances; (6) the proposal must be reviewed by the Department of City Planning (“DCP”); and (7) there is insufficient parking for the project on the surrounding streets; and

WHEREAS, the subject site consists of 296,208 sq. ft. of lot area bounded by St. Andrews Road to the north and Richmond Road to the south, in an R1-2 zoning district within the Special Natural Area Zoning District; and

WHEREAS, the applicant notes that 59,520 sq. ft. of lot area is Freshwater Wetland, 157,135 sq. ft. of lot area is Freshwater Wetland Adjacent Area, and the remaining 79,533 sq. ft. of lot area is unregulated; and

WHEREAS, the applicant proposes to construct 13 single family homes on the site, with four of the homes fronting on Richmond Road and nine of the homes accessed by Tupelo Court, a newly created private street; and

WHEREAS, the applicant states that three of the homes are proposed to be constructed in the bed of a mapped street known as Mace Street, and two of the homes are proposed to be constructed in the bed of a mapped street known as Ascot Avenue; accordingly, the applicant seeks a waiver of Section 35 of the General City law for the construction of five homes in the bed of a mapped street; and

WHEREAS, the other eight homes in the proposed development do not require a waiver of Section 35 of the General City Law, and therefore are not included in the subject application; and

WHEREAS, by letter dated January 12, 2011, the Department of Transportation (“DOT”) states that it has reviewed the project and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, by letter dated September 26, 2011, the Department of Environmental Protection (“DEP”) states that the Amended Drainage Plan No. D-3 (R-2)/D-4 (R-1), dated March 17, 2005, does not show any future sewers in the portions of mapped Mace Street and mapped Ascot Avenue at issue, but does show stabilized outlets at the intersection of Mace Street and mapped Call Street which will discharge storm flow into the referenced property; and

WHEREAS, DEP further states that, based on the June 28, 2011 map submitted by the applicant, which shows the DEP easement area which will be available to accept the storm flow discharge from the above-mentioned stabilized outlets, and based on the easement document submitted by the applicant for the portion of the property not to be developed on lot 36, it has no

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# MINUTES

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objections to the proposed application; and

WHEREAS, by letter dated December 7, 2010, the Fire Department states that it objects to the construction of any buildings within the bed of a mapped street (including the construction of the proposed homes in the bed of Ascot Avenue and Mace Street) because such streets should be opened in order to improve emergency response in the area; and

WHEREAS, in response, the applicant states that it made a good faith attempt to utilize and open the existing mapped but unbuilt streets on the site, however, the New York State Department of Environmental Conservation (“DEC”) would not allow the existing streets on the site to be opened because they are within Freshwater Wetland and Freshwater Wetland Adjacent Area; and

WHEREAS, the applicant submitted a letter from DEC dated March 20, 2012 which states that it issued a freshwater wetlands permit for the construction of 13 single family homes on the site, which keeps portions of the beds of St. Andrews Road, Mace Street, and Ascot Avenue unbuilt in perpetuity to preserve and protect freshwater wetlands and their benefits, and the street beds will not be opened and developed on the property controlled by the terms of the cited DEC permit; and

WHEREAS, by letter dated March 6, 2012, the Fire Department states that it reviewed the proposed site plan and all conditions relative to building access roads are in compliance with the 2008 Fire Code; and

WHEREAS, accordingly, the Board acknowledges the stated policy of the Fire Department that all mapped streets be opened, but finds that the applicant has submitted sufficient evidence to warrant approval of the proposed construction based on the inability to open the mapped but unbuilt streets on the site due to the requirements of the DEC freshwater wetlands permit, in conjunction with the Fire Department’s acknowledgment that the proposed Tupelo Court will fully comply with the 2008 Fire Code; and

WHEREAS, in response to the concerns raised by the Opposition regarding the construction within the Freshwater Wetlands, flooding, and the need to undergo an environmental assessment of the site, the applicant notes that more than half of the site is being preserved in its natural state, the proposed construction will only take place within the Freshwater Wetlands Adjacent Area and not within the Freshwater Wetlands, and that DEC issued a freshwater wetlands permit for the proposed construction, which incorporated an environmental review that followed SEQR regulations; and

WHEREAS, in response to the Opposition’s claim that the proposal does not satisfy the findings of ZR § 72-21 and that it creates potential zoning non-compliances, the Board notes that the findings under ZR § 72-21 are not applicable to an application under Section 35 of the General City Law, and that all issues related to zoning on the site are subject to review and approval by the Department of Buildings; and

WHEREAS, as to the Opposition’s contention that the proposal must be reviewed by DCP, the applicant submitted a letter from DCP stating that the proposed project will require Special Natural Area District authorizations and review by the City Planning Commission, but that the project requires a

Board determination before an application can be filed with DCP; and

WHEREAS, in response to the Opposition’s concerns regarding a lack of parking, the applicant notes that off-street parking spaces will be provided for the proposed homes, the proposed Tupelo Court will be built out to a width of 38 feet such that parking can be provided on that street, and Richmond Road will be widened so that additional parking can be provided on that street; and

WHEREAS, while the Board recognizes the concerns expressed by the Opposition, such considerations are not part of an application to permit construction within the bed of a mapped street under Section 35 of the General City Law, and therefore are not subject to the Board’s review; and

WHEREAS, the Board notes that the construction must comply with all requirements of the Zoning Resolution; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decisions of the Staten Island Borough Commissioner, dated May 10, 2010, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 20, 2012” – (2) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT all necessary DEC and DEP approvals must be obtained prior to the issuance of DOB permits;

THAT the necessary DCP review and authorization must be obtained prior to the issuance of DOB permits;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 24, 2012.

**\*The resolution has been revised to correct the Plans Dates which read: ... “ Received March 20, 2012” – (3) sheets”... now reads: ... “ Received March 20, 2012” – (2) sheets”. Corrected in Bulletin No. 19, Vol. 97, dated May 9, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, No. 20

May 16, 2012

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

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# DOCKET

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New Case Filed Up to May 8, 2012  
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**141-12-BZ**

65-02/10 164th Street, Southwest corner of 65th Street, Block 6762, Lot(s) 53, Borough of **Queens, Community Board: 8**. Special Permit pursuant to §§11-411 and 11-413 to re-instate and extend the term of the previous BSA resolution las acted upon the Board on November 25, 1986 and an amendment to permit the installation of three (3) new awnings with signage; and changes to the interior layout. R-4 district.  
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**142-12-A**

24-02 89th Street, West side of 89th Street, between Astoria Boulevard and 23rd Avenue., Block 1100, Lot(s) 101, Borough of **Queens, Community Board: 3**. This application seeks a waiver of Section 35 of the General City Law ("CL") to permit the construction of a community facility building within the bed of a mapped street. R3-2 district.  
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**143-12-BZ**

2615-2621 East 17th Street, between Avenue Z and Jerome Avenue, Block 7462, Lot(s) 7501, Borough of **Brooklyn, Community Board: 15**. This application is filed for a special permit to Z.R.§73-44, as amended to permit in a C8-1 zoning district, the reduction of the required parking, which is contrary to ZR§36-231. C8-1 district.  
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**144-12-A**

339 West 29th Street, north side of West 29th Street, between Eighth and Ninth Avenues., Block 753, Lot(s) 16, Borough of **Manhattan, Community Board: 04**. The application is filed pursuant to MDL§310 to vary MDL§171(2)(f), to allow for the addition of a fifth floor to the existing building on the site. R8B district.  
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**145-12-A**

339 West 29th Street, north side of West 29th Street, between Eighth and Ninth Avenues, Block 753, Lot(s) 16, Borough of **Manhattan, Community Board: 04**. The application is filed pursuant to Charter §666, challenging the decision of the Department of Buildings requiring retroactive approval of work by the Landmarks Preservation Commission ("LPC"), despite the issuance of permits and commencement of construction on the site years in advance of LPC designation. R8B district.  
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**146-12-A**

15 Beach 220th Street, east side of Beach 220th Street, 168.5' north of 4th Avenue., Block 16350, Lot(s) p/o400, Borough of **Queens, Community Board: 14**. The proposed alteration and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system partially in the bed of the service road is contrary to Building Department policy. R4 district.  
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**147-12-A**

2368 12th Avenue, bounded by Henry Hudson Parkway, Wst 134th Street, 12th Avenue, 135th Street., Block 2005, Lot(s) 32, Borough of **Manhattan, Community Board: 9**. Appeal from two determinations of the Manhattan Borough Commissioner of the Department of Buildings regarding the establishment of non-conforming accessory sign as before February 27, 2001 and proof that discontinuance of accessory use in connection with a sign at the subject property did not occur for a period of two or more years. M1-2/Special Ma district.  
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**148-12-BZ**

981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot(s) 12, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to Z.R.§73-621, to request a Special Permit to enlarge a detached, single family residence in a residential zoning district (R4). R4 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JUNE 5, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 5, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**635-57-BZ**

APPLICANT – Francis R. Angelino, Esq., for Landmark 115 East 69<sup>th</sup> Street, L.P, owner.

SUBJECT – Application March 1, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the continued use of the cellar, first and second floors of five story building for general office use (UG6) which expired on January 26, 2012; waiver of the rules. R8B zoning district.

PREMISES AFFECTED – 115 East 69<sup>th</sup> Street, north side, 185' east of Park Avenue, Block 1404, Lot 8, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**678-74-BZ**

APPLICANT – Tyree Service Corp., for Capitol Petroleum Group, owners.

SUBJECT – Application March 30, 2012 – Application filed pursuant to §§ 72-01 and 72-22 of the Zoning Resolution, of the City of New York, seeking a minor amendment to BSA resolution 678-74-BZ, approved on April 8, 1975. The variance (§72-21) permitted in a C1-6 district, the enlargement in lot area and reconstruction of an automotive service station (UG 16B) with accessory uses. The amendment seeks to legalize the fueling islands location along with its number of dispensers. This amendment will also permit the installation of replacement of underground storage tanks and fueling equipment. C1-6 zoning district. PREMISES AFFECTED – 63 8<sup>th</sup> Avenue, southwest corner of West 13<sup>th</sup> Street and 8<sup>th</sup> Avenue, Block 616, Lot 46, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**37-93-BZ**

APPLICANT – Sheldon Lobel, P.C., for Vornado Forest Plaza, LLC, owner; 2040 Forest Avenue Fitness Group LLC, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Planet Fitness*) which expired on November 9, 2003; Waiver of the Rules. C8-1 zoning district.

PREMISES AFFECTED – 2040 Forest Avenue, south side of Forest Avenue between Heaney Avenue and Van Name Avenue, Block 1696, Lot 8, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**112-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman by Eugene Langsam, owners.

SUBJECT – Application October 12, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a two story and cellar (UG4) synagogue (Bnai Shloima Zalman) which expired on September 11, 2011. R-2 zoning district.

PREMISES AFFECTED – 1089-1093 East 21<sup>st</sup> Street, between Avenue I and Avenue J, Block 7585, Lot 21 & 22, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**175-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zacker Oil Corp., owner; Leemits Petroleum, Inc., lessee.

SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously approved gasoline service station (*Getty*) which expired on March 29, 2012. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, northeast corner of Baycheser and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**APPEALS CALENDAR**

**80-11-A, 84-11-A, 85-11-A & 103-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law requesting variance to allow for enlargement to the 5 story building, MDL Sections 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 331, 333, 335, 329 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 46, 45, 44, 47, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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**83-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 159 West 78<sup>th</sup> Street, Corp., for Felix and Lisa Oberholzer-Gee, owners.

SUBJECT – Application June 9, 2011 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R8B zoning district.

PREMISES AFFECTED – 159 West 78<sup>th</sup> Street, north side of West 78<sup>th</sup> Street, between Columbus and Amsterdam Avenues, Block 1150, Lot 8, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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# CALENDAR

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## 38-12-A & 39-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Birb Realty, owner.

SUBJECT – Application February 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street contrary to General City Law Section 36. R3-1 Zoning District.

PREMISES AFFECTED – 131 & 133 Aviston Street, 80' northwest corner of intersection of Aviston Street and Riga Street, Block 4683, Lot 22, 23, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**JUNE 5, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 5, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

## 97-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the enlargement of a zoning lot of a previously approved variance which permitted an Automotive Service Station (UG 16B) with accessory uses in a residential zoning district. The application also seeks to permit a 364 Square foot enlargement to the existing accessory convenience store. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

**COMMUNITY BOARD #9BX**

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## 23-12-BZ

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building contrary to use regulations §42-00. M1-1 zoning district.

PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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## 30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to ZR §36-11. R6/C2-2 zoning district

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

**COMMUNITY BOARD #7Q**

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## 64-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16302 Jamaica LLC, owner; Blink Jamaica Avenue, Inc., lessee.

SUBJECT – Application March 20, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink*) within portion of an existing building. C6-3(DP) zoning district.

PREMISES AFFECTED – 163-02 Jamaica Avenue, southeast corner of intersection of Jamaica and Guy R. Brewer Boulevard, block 10151, Lot 1, Borough of Queens.

**COMMUNITY BOARD #12Q**

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## 68-12-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90<sup>th</sup> Street, Block 9093, Lot 13, Borough of Queens.

**COMMUNITY BOARD #9Q**

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*Jeff Mulligan, Executive Director*



# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 8, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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**SPECIAL ORDER CALENDAR**

**442-42-BZ**

APPLICANT – Eric Palatnik, P.C., for Cropsey-20th Avenue Corp, owner.

SUBJECT – Application November 17, 2011 – Amendment (§11-412) to enlarge an existing gasoline service station (*Shell*) and legalize the conversion of repair bays to an accessory convenience store. R-5 zoning district.

PREMISES AFFECTED – 2001/2011 Cropsey Avenue, northeast corner of 20<sup>th</sup> Avenue and Cropsey Avenue, Block 6442, Lot 5, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of 20<sup>th</sup> Avenue and Cropsey Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 29, 1942 when, under the subject calendar number, the Board granted a variance to permit the extension and reconstruction of an existing gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on March 1, 2005, the Board granted an amendment pursuant to ZR § 11-412 to permit an extension of the canopy to connect to the existing building and an alteration of the signage at the site; and

WHEREAS, the applicant now seeks an amendment to (1) legalize the conversion of the accessory automotive repair bays to an accessory convenience store, (2) permit the enlargement of the convenience store building from 1,816 sq. ft. to approximately 2,396 sq. ft., (3) relocate the dumpster enclosure to the rear of the site, (4) remove the existing clothing bins from southeast corner of the site, and (5) reduce the number of parking spaces at the site; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building; and (ii) the accessory convenience store has a maximum retail selling space of 2,500 sq. ft. or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the proposed convenience store is located within an enclosed building and has a retail selling space of less than 2,500 sq. ft. or 25 percent of the zoning lot area; and

WHEREAS, at hearing, the Board questioned whether the proposal, which reduced the total number of parking spaces on the site from 11 to seven, provides sufficient parking for the convenient store use; and

WHEREAS, in response, the applicant submitted revised plans reflecting an increase in the total number of parking spaces on the site from seven to nine, and submitted a letter from a parking consultant stating that the proposal provides a sufficient number of parking spaces to accommodate the demand generated by the convenience store; and

WHEREAS, the applicant states that the coin-operated car wash and vacuum will be removed from the site, in accordance with the Board’s previous grant; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the signage on the site complied with C1 district regulations; and

WHEREAS, in response, the applicant submitted a signage analysis reflecting that the signage on the site complies with C1 district regulations; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the approved plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *amends* the resolution, dated September 29, 1942, so that as amended this portion of the resolution shall read: “to permit the noted site modifications; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received April 10, 2012’–(7) sheets; and *on further condition*:

THAT all signage will comply with C1 zoning district

# MINUTES

regulations;

THAT landscaping will be provided and maintained in accordance with the BSA-approved plans;

THAT all lighting will be directed downward and away from adjacent residential uses;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 320350810)

Adopted by the Board of Standards and Appeals May 8, 2012.

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## 1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> Street, LLC c/o Madison Realty Capital, L.P., owner.

SUBJECT – Application December 15, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) to convert the fourth and sixth floors of an existing building from manufacturing lofts to residential use which expired on April 27, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 27, 2011; waiver of the Rules. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, north side of West 26<sup>th</sup> Street, 350’ east of 6<sup>th</sup> Avenue, Block 828, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete the conversion of a portion of a seven-story building from manufacturing use to residential use, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the north side of West 26<sup>th</sup> Street, between Broadway and the Avenue of the Americas, within an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 8, 1980 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the conversion of all floors above the first floor from manufacturing lofts into a multiple dwelling; and

WHEREAS, subsequently, the time to complete construction was extended at various times; and

WHEREAS, most recently, on October 27, 2009, the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy, which expired on October 27, 2011; and

WHEREAS, the applicant states that the second, third, fifth, and seventh floors of the subject building have been converted to residential use pursuant to the Board’s grant, but that the fourth and sixth floors are still in the process of being converted to residential use, and a certificate of occupancy for the building has yet to be obtained; and

WHEREAS, the applicant represents that construction has not been completed due to change in ownership of the building, which was not completed until June 2011, and delays encountered at the Department of Buildings (“DOB”) regarding sprinkler system requirements; and

WHEREAS, thus, the applicant now requests a four-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about the outstanding violations at the site and directed the applicant to provide justification for its request for a four-year extension of time; and

WHEREAS, in response, the applicant submitted a letter from the contract vendee explaining the steps they will take after closing title to address the outstanding Environmental Control Board and DOB violations at the site; and

WHEREAS, the applicant also submitted a timeline which notes the estimated date for the completion of construction and obtaining a certificate of occupancy and details the various approvals to be obtained, work to be done, and violations to be resolved; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 8, 1980, 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 expire on May 8, 2016; *on condition*:

THAT construction will be completed and a certificate of occupancy obtained by May 8, 2016;

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THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 100561429)

Adopted by the Board of Standards and Appeals, May 8, 2012.

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## 997-84-BZ

APPLICANT – Akerman Senterfitt, for 222 Union Associates, owner; Central Parking System of New York, Inc., lessee.

SUBJECT – Application February 6, 2012 – Extension of Time to obtain a Certificate of Occupancy for an existing six story public parking garage with an automobile rental establishment which expired on June 4, 2008; waiver of the rules. R6A zoning district.

PREMISES AFFECTED – 800 Union Street, southside of Union Street between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 957, Lot 29, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

### APPEARANCES –

For Applicant: Jessica A. Loeser.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, and an extension of time to obtain a certificate of occupancy, which expired on June 4, 2008; and

WHEREAS, a public hearing was held on this application on Mach 6, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the south side of Union Street between Sixth Avenue and Seventh Avenue, within an R6A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1929 when, under BSA Cal. No. 271-29-BZ, the Board granted a variance to permit the construction of a six-story building to be occupied by a parking garage and gasoline station; and

WHEREAS, in 1959, under BSA Cal. No. 490-59-BZ, the Board granted a variance to permit the change of use of the building to manufacturing and storage of incombustibles; and

WHEREAS, on September 10, 1985, under the subject calendar number, the Board permitted the change of use of the building to a public parking garage and automobile rental establishment, pursuant to ZR § 11-413, for a term of ten years; and

WHEREAS, subsequently, on May 14, 1996, the grant was extended for an additional ten-year term; and

WHEREAS, most recently, on December 4, 2007, the Board granted an amendment, pursuant to ZR § 11-412, to legalize an increase in the number of parking spaces from 149 to 237, including 20 parking spaces for rental cars on the second floor, and granted an additional ten-year extension of term; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by June 4, 2008; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained due to miscommunication between the owner and operator of the site; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the site is in compliance with the previous grant, and questioned whether the signage at the site complied with C1 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that the stackers have been relocated to the cellar level and that the capacity of the garage has been reduced in accordance with the previous grant; and

WHEREAS, as to the signage on the site, the applicant submitted a revised sign elevation drawing which reflects the removal of certain non-complying signs and the relocation of certain signs to complying heights; and

WHEREAS, the applicant states that scaffolding which has recently been installed at the site currently blocks access to the signage, and therefore requests that it be permitted to bring the signage into compliance after the scaffolding is removed, in approximately six months; and

WHEREAS, based upon the above, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated September 10, 1985, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on May 8, 2013; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received May 3, 2012’-(1) sheet; and *on further condition*:

THAT this grant will expire on September 10, 2015;

THAT all signage on the site will be as indicated on the BSA-approved plans;

THAT the above conditions will be listed on the

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certificate of occupancy;

THAT a new certificate of occupancy will be obtained by May 8, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (Alt. 863/84)

Adopted by the Board of Standards and Appeals May 8, 2012.

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## 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.  
SUBJECT – Application December 30, 2011 – Amendment to a previous variance (§72-21) which allowed for the construction of a mixed use building, contrary to floor area and open space regulations. The amendment requests changes to the interior layout which would decrease medical office space, increase the number of dwelling units from 28 to 36, and increase parking from 58 to 61 spaces. R6/C2-2 zoning district.

PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a 12-story mixed-use commercial/community facility/residential building; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1)

the owner ensures that the existing underground oil/gas tanks are legally removed and the soil is remediated; and (2) the parking plan be reviewed for compliance with zoning, height, and width; and

WHEREAS, the site is located on the northeast corner of Main Street and Elder Avenue; and

WHEREAS, the site is partially within an R6 zoning district and partially within an R6/C2-2 zoning district and has a total lot area of 9,632 sq. ft.; and

WHEREAS, the site has 348 feet of frontage on 31<sup>st</sup> Avenue, a depth of 600 feet, and a total lot area of 208,803 sq. ft.; and

WHEREAS, on August 25, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a 12-story mixed-use commercial/community facility/residential building which did not comply with the underlying zoning regulations for floor area ratio (“FAR”) and open space, contrary to ZR § 23-142; and

WHEREAS, the applicant now requests an amendment to permit changes to the interior layout of the proposed building, including an increase in the number of dwelling units and parking spaces, an increase in the commercial floor area, a decrease in the community facility floor area, and modifications to the floor-to-ceiling heights that result in a slight increase in the building height; and

WHEREAS, specifically, the applicant seeks to increase the number of dwelling units from 26 units to 36 units and to provide a corresponding increase in the number of accessory parking spaces, from 58 spaces to 61 spaces; and

WHEREAS, the applicant states that the additional ten dwelling units are created by rearranging the interior layout on the fourth through tenth floors to create four dwelling units on each floor instead of three, and converting the two approved 11<sup>th</sup> and 12<sup>th</sup> floor duplexes into four single-floor units; the proposed residential floor area remains the same as the floor area approved by the Board pursuant to the original variance (33,292 sq. ft.); and

WHEREAS, the applicant further states that the additional number of parking spaces required by the proposed increase in dwelling units will be accommodated by installing stackers in the cellar and second floor parking garages; and

WHEREAS, the applicant notes that the proposed 61 parking spaces includes the required 55 parking spaces and six required queuing spaces; and

WHEREAS, the applicant states that the floor-to-ceiling heights of the cellar, first, and second floors have been adjusted to accommodate the stackers (which require overhead clearance of 10’-0”), resulting in a 1’-0” increase in the total building height, from 137’-11” to 138’-11”;

WHEREAS, the applicant notes that the proposed height remains within the building envelope that is permitted as-of-right; and

WHEREAS, the applicant also seeks a slight increase in the commercial floor area on the ground floor from 6,820 sq. ft. to 7,040 sq. ft., due to a redesigned elevator core

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which was relocated to reduce the distance from the street entrance to the elevators, and a slight decrease in the community facility floor area from 4,850 sq. ft. to 4,149 sq. ft., due to the enlargement of the second floor parking garage to accommodate the additional parking spaces; and

WHEREAS, the applicant states that the proposed amendments will not adversely affect the surrounding neighborhood, as only ten additional dwelling units are proposed and required parking will be provided within the building; and

WHEREAS, the applicant further states that no increase in the approved residential floor area or decrease in the approved residential open space is requested; and

WHEREAS, in response to the Community Board's concerns regarding environmental remediation, the applicant states that its environmental consultant is working with the New York State Department of Environmental Conservation ("DEC") to determine the extent and scope of work necessary to remediate the soil at the site, that DEC requested the submission of a Remedial Action Work Plan ("RAWP"), and that upon approval of the RAWP it will undertake the necessary soil remediation measures simultaneously with the commencement of construction at the site; and

WHEREAS, as to the Community Board's concerns regarding the proposed parking plan, the applicant submitted revised plans which reflect the proposed parking stackers at the second and cellar floors, and the adjusted floor-to-ceiling heights of the cellar, first, and second floors to accommodate the stackers; and

WHEREAS, the Board notes that the proposed parking plan is subject to DOB review and approval for compliance with the Zoning Resolution and Building Code, and any other applicable requirements; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 25, 2009, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 26, 2012"-- eleven (11) sheets; and *on further condition*:

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 402635403)

Adopted by the Board of Standards and Appeals May 8, 2012.

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**319-53-BZ**

APPLICANT – Ficara & Associates, P.C., by Majed El Jamal, for 22<sup>nd</sup> Street Realty LLC, owner.

SUBJECT – Application August 16, 2011 – Extension of Term (§11-411) for the continued operation of an automotive repair shop with no body work which expired on January 31, 2011; Waiver of the Rules. R5 zoning district. PREMISES AFFECTED – 1135 East 222<sup>nd</sup> Street, northwest corner of Eastchester Road, Block 4900, Lot 12, Borough of Bronx.

**COMMUNITY BOARD #12BX**

APPEARANCES –

For Applicant: John Anzalone.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 10 A.M., for continued hearing.

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**433-61-BZ**

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.

SUBJECT – Application November 28, 2012 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations; Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for continued hearing.

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**534-65-BZ**

APPLICATION – Alfonso Duarte for Parker Yellowstone, owner.

SUBJECT – Application March 9, 2012 – Extension of Term permitting surplus tenant parking spaces, within an accessory garage, for transient parking pursuant to §60 (3) of the Multiple Dwelling Law, which expired on July 13, 2010; waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 104-40 Queens Boulevard, northeast corner Yellowstone Boulevard. Block 3175, Lot 1. Borough of Queens.

**COMMUNITY BOARD #6Q**

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for continued hearing.

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## 749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application April 9, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) which expired on March 8, 2012.

PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

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## 339-04-BZ

APPLICATION – Eric Palatnik, P.C., for Kramer and Wurtz, Inc., owner.

SUBJECT – Application January 17, 2012 – Extension of Term (§11-411) of a previously granted variance which permits an automotive service station (UG 16B) which expires on June 4, 2012. R3-1 zoning district.

PREMISES AFFECTED – 157-30 Willets Point Boulevard, south side of the intersection formed by Willets Point Boulevard and Clintonville Street. Block 4860, Lot 15. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 32-12-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative Inc., owner; Noreen & William Goodwin, lessees.

SUBJECT – Application February 8, 2012 – Proposed reconstruction and enlargement of the existing single family dwelling not fronting a mapped street, contrary to Article 3, Section 36 of the General City Law, and the proposed upgrade to the existing private disposal system located partially in the bed of the service road, contrary to Buildings Department policy.

PREMISES AFFECTED – 110 Beach 220<sup>th</sup> Street, west side Beach 220<sup>th</sup> Street, 160' south of Breezy Point Boulevard, Block 16350, Lot p/0400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 1, 2012, acting on Department of Buildings Application No. 420515632, reads in pertinent part:

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York. Therefore:

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law; and
- b) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is in the bed of the service lane contrary to the Department of Building policy; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated May 8, 2012 the Fire Department states that it has no objection to the subject proposal, with the condition that the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and

WHEREAS, the applicant submitted plans reflecting that the building will be fully sprinklered and interconnected smoke alarms will be installed in accordance with the Fire Department's request; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated February 1, 2012, acting on Department of Buildings Application No. 420515632, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received February 9, 2012"-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

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jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the building will be fully sprinklered and interconnected smoke alarms will be provided in accordance with the BSA-approved plans;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2012.

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## 51-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Patricia Davey, lessee.

SUBJECT – Application March 7, 2012 – Proposed reconstruction of an existing building located partially in the bed of a mapped street (Beach 216 Street), contrary to Section 35 of the General City Law and Buildings Department policy. R4 zoning district.

PREMISES AFFECTED – 46 Tioga Walk, east of Beach 216<sup>th</sup> Street, 45' north of 6<sup>th</sup> Avenue, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 1, 2012, acting on Department of Buildings Application No. 420513171, reads in pertinent part:

- A1- The proposed reconstruction of the existing building located on a site where the building and lot are located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law.
- A2-The private upgrade of the private disposal system is not in the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, by letter dated April 26, 2012 the Fire Department states that it has no objection to the subject proposal, with the condition that the entire building be fully sprinklered in conformance with the sprinkler provisions of

Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and

WHEREAS, the applicant submitted plans reflecting that the building will be fully sprinklered and interconnected smoke alarms will be installed in accordance with the Fire Department's request; and

WHEREAS, by letter dated March 21, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated April 25, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated March 1, 2012, acting on Department of Buildings Application No. 420513171, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 7, 2012 - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the building will be fully sprinklered and interconnected smoke alarms will be provided in accordance with the BSA-approved plans;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2012.

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## 119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street,

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between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Margery Perlmutter.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for deferred decision.

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## 155-11-A

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for deferred decision.

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## 52-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Michael Mullaly, lessee.

SUBJECT – Application March 7, 2012 – Proposed reconstruction of an existing building located in the bed of a mapped street, contrary to Section 35 of the General City Law, not fronting a mapped street, contrary to Section 36 of General City Law and contrary to the Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 35 Janet Lane, north of Janet Lane, east of Beach 203<sup>rd</sup> Street, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for continued hearing.

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## REGULAR MEETING TUESDAY AFTERNOON, MAY 8, 2012 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 22-12-BZ

#### CEQR #12-BSA-072M

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner.

SUBJECT – Application February 1, 2012 – Special Permit (§73-36) to allow the enlargement of an existing Physical Culture Establishment (*SoulCycle*).

PREMISES AFFECTED – 1470 Third Avenue, northwest corner of East 83<sup>rd</sup> Street and Third Avenue, Block 1512, Lot 33, Borough of Manhattan.

#### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 24, 2012, acting on Department of Buildings Application No. 120178253, reads in pertinent part:

Proposed enlargement to existing ‘Physical Culture Establishment’ is not permitted as-of-right in C1-9 zoning district. This use is contrary to Section 32-10 ZR. Requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the extension of an existing physical culture establishment (“PCE”) on a portion of the first floor and cellar of a six-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 3, 2012 after due notice by publication in *The City Record*, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and



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WHEREAS, the subject site is located on the northwest corner of East 83<sup>rd</sup> Street and Third Avenue, within a C1-9 zoning district; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building; and

WHEREAS, on May 25, 2010, under BSA Cal. No. 20-10-BZ, the Board granted a special permit pursuant to ZR § 73-36 for the establishment of a PCE to occupy a total of 1,480 sq. ft. of floor area on a portion of the first floor of the subject building; and

WHEREAS, the applicant now seeks to expand the PCE to include an additional 1,945 sq. ft. of floor area on the first floor of the subject building (for a total PCE floor area of 3,425 sq. ft.), with additional floor space located in a portion of the cellar; and

WHEREAS, the applicant states that a new special permit is required because the proposed PCE extension increases the existing PCE floor area by more than 50 percent; and

WHEREAS, the PCE is operated as Soul Cycle; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:30 a.m. to 7:30 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA072M, dated January 28, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous

Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the extension of a physical culture establishment on a portion of the first floor and cellar of an existing six-story commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 11, 2012" - four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 8, 2022;

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 signage shall comply with C1 district regulations;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 8, 2012.

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## **42-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141),

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maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Saul Needle.

**ACTION OF THE BOARD** – Laid over to July 10, 2012 at 1:30 P.M., for continued hearing.

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**21-11-BZ**

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Shayna Estreicher.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for adjourned hearing.

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**104-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Shayna Estreicher.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for adjourned hearing.

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**117-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (§72-21) to permit the development of a new athletic center accessory to an existing UG 3 school (*Mary Louis Academy*), contrary to maximum height and sky exposure plane (§24-521), minimum rear yard, (§24-382) minimum front yard (§24-34) and nameplates or identification signs

(§22-321). R1-2 and R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

**COMMUNITY BOARD # 8Q**

APPEARANCES –

For Applicant: Richard Lobel, Temaria Younger and Joe Lewinger.

**ACTION OF THE BOARD** – Laid over to June 12, 2012 at 1:30 P.M., for continued hearing.

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**129-11-BZ**

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3<sup>rd</sup> Avenue. Block 447, Lot 43. Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for deferred decision.

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**142-11-BZ**

APPLICANT – Goldman Harris LLC, for The Phillippe at W75st NY, LLC, owner.

SUBJECT – Application September 9, 2011 – Variance (§72-21) to allow a new residential building, contrary to height and setback (§23-692), rear setback (§23-633), and lot coverage (§23-145) regulations. C4-6A zoning district.

PREMISES AFFECTED – 207 West 75<sup>th</sup> Street, north side of West 75<sup>th</sup> Street, between Broadway and Amsterdam Avenue, Block 1167, Lot 28, Borough of Manhattan.

**COMMUNITY BOARD #7M**

For Applicant: Vivien R. Krieger.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for adjourned hearing.

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**183-11-BZ**

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for S.K.I. Realty, Inc., owner; Memorial Hospital for cancer and Allied Diseases, lessee.

SUBJECT – Application December 5, 2011 – Variance (§72-21) to allow the construction of a new outpatient surgical center (*Memorial Hospital for Cancer and Allied Diseases*), contrary to floor area ratio (§33-123); rear yard (§33-261) height and setback (§33-432); and curb cut (§13-142) regulations. C1-9/C8-4 zoning districts.

PREMISES AFFECTED – 1133 York Avenue, north side of east 61<sup>st</sup> Street, westerly from the corner formed by the intersection of the northerly side of East 61<sup>st</sup> Street and the

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westerly side of York Avenue, Block 1456, Lot 21, Borough of Manhattan.

## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Shelly Friedman, Jeff Brand, Elena Aristova, Michelle Burke and Anne Locke.

For Opposition: Chris Wright, Cabot Marks, Nicole Detko, Chris Kossifos, Curtis M. Sawyer, Howard Brumer, Adam Zeliger, R. Evans, Herbert Dorfman, Willem Brans, Jo Brans, Mark Munroe, Edward Hartzig, Molly Blayney and Elizabeth Ashby.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2012 at 1:30 P.M., for decision, hearing closed.

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## 5-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Aaron Herzog, owner.

SUBJECT – Application January 12, 2012 – Variance (§72-21) for the addition of a third floor to an existing two family residential building, contrary to front yard requirements (§23-146(c)), front yards and side yard requirement (§23-146(d)). R5 zoning district/Borough Park.

PREMISES AFFECTED – 812 Dahill road, northwest corner of Dahill Road and 19<sup>th</sup> Avenue, Block 5445, Lot 39, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

### APPEARANCES –

For Applicant: Moshe M. Friedman.

**ACTION OF THE BOARD** – Laid over to June 19, 2012 at 1:30 P.M., for continued hearing.

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## 8-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Gladys Mandalaoui and Solomon Mandalaoui, owners.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R4 zoning district/Special Ocean Parkway District.

PREMISES AFFECTED – 705 Gravesend Neck Road, north side of Gravesend Neck Road, between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, block 7159, Lot 39, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Eugene Cutaneo.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012 at 1:30 P.M., for decision, hearing closed.

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## 44-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 952-1064 Flatbush Avenue ELB LLC, owner; 1024 Flatbush Avenue Fitness Group, LLC, lessee.

SUBJECT – Application February 23, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing four-story building. C4-4A zoning district.

PREMISES AFFECTED – 1024 Flatbush Avenue, west side of Flatbush Avenue between Regent Place and Beverly Road, Block 5125, Lot 56, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to June 12, 2012 at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on May 1, 2012, under Calendar No. 256-02-BZ and printed in Volume 97, Bulletin No. 19, is hereby corrected to read as follows:

### 256-02-BZ

APPLICANT – Goldman Harris LLC, for 160 Imlay Street Real Estate, owner.

SUBJECT – Application February 10, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on March 18, 2012. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, bounded by Imlay, Verona and Commerce Streets and Atlantic Basin, Block 515, Lot 75, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

#### APPEARANCES –

For Applicant: Eugene Travers.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the conversion of an existing six-story industrial building to residential use; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the west side of Imlay Street between Commerce Street and Verona Street, within an M2-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 23, 2003 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing vacant six-story industrial building to residential use, contrary to § 42-00; and

WHEREAS, the Board notes that, pursuant to ZR § 72-23, a variance automatically lapses if substantial construction in accordance with the approved plans is not completed within four years from the date of the variance; however, if judicial proceedings have been instituted to review the Board's decision, the four-year lapse period commences upon the date of entry of the final order in such proceedings, including appeals; and

WHEREAS, the applicant notes that judicial proceedings were instituted to review the Board's decision in the subject

case (In the Matter of Red Hook/Gowanus Chamber of Commerce v. New York City Board of Standards and Appeals, et. al., Index No. 2308/04); and

WHEREAS, the applicant submitted a Decision and Order from the Appellate Division dated March 18, 2008, which denied the amended petition and dismissed the proceeding for failure to join a necessary party; and

WHEREAS, the applicant states that the March 18, 2008 Decision and Order has not been appealed and constitutes a final order in the proceeding for the purposes of ZR §72-23; and

WHEREAS, accordingly, the four-year lapse period for the variance commenced on March 18, 2008, and substantial construction was to be completed by March 18, 2012; and

WHEREAS, the applicant states that due to financing delays and additional delays related to the subject litigation, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 23, 2003, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on May 1, 2016; *on condition:*

THAT substantial construction shall be completed by May 1, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 301396790)

Adopted by the Board of Standards and Appeals, May 1, 2012.

**\*The resolution has been revised to correct the APPEARANCES – For Applicant which read: “Eugene Travers” now reads: “Eugene Travers”. Corrected in Bulletin No. 20, Vol. 97, dated May 16, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on April 24, 2012, under Calendar No. 206-10-A thru 210-10-A and printed in Volume 97, Bulletin Nos. 16-18, is hereby corrected to read as follows:

### 206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35 and §72-01-(g). R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

**ACTION OF THE BOARD** – Applications granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated February 13, 2012, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966 read in pertinent part:

Proposed construction of a one family residence building within bed of a mapped street is contrary to General City Law 35 and not permitted; and

WHEREAS, this is an application to permit the proposed construction of five single-family homes located within the bed of a mapped street, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in the *City Record*, with continued hearings on February 28, 2012 and March 27, 2012, and then to decision on April 24, 2012; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, New York State Assembly Member Michael J. Cusick provided written testimony in opposition to this application; and

WHEREAS, New York State Assembly Member Louis R. Tobacco provided written testimony in opposition to this application; and

WHEREAS, New York State Senator Andrew J. Lanza provided written testimony requesting that the Board review the environmental and transportation issues associated with this application; and

WHEREAS, United States Congress Member Michael G. Grimm provided written testimony in opposition to this application; and

WHEREAS, New Yorkers for Parks provided written testimony in opposition to this application; and

WHEREAS, representatives of the Richmondtown and Clarke Avenue Civic Association and the Grasmere Civic Association provided oral and written testimony in opposition to this application (collectively, the “Opposition”); and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposal is in a freshwater wetlands area; (2) an environmental assessment should be performed on the site; (3) the proposal could cause increased flooding in the area; (4) the applicant has not satisfied the findings pursuant to ZR § 72-21; (5) the proposal creates potential zoning non-compliances; (6) the proposal must be reviewed by the Department of City Planning (“DCP”); and (7) there is insufficient parking for the project on the surrounding streets; and

WHEREAS, the subject site consists of 296,208 sq. ft. of lot area bounded by St. Andrews Road to the north and Richmond Road to the south, in an R1-2 zoning district within the Special Natural Area Zoning District; and

WHEREAS, the applicant notes that 59,520 sq. ft. of lot area is Freshwater Wetland, 157,135 sq. ft. of lot area is Freshwater Wetland Adjacent Area, and the remaining 79,533 sq. ft. of lot area is unregulated; and

WHEREAS, the applicant proposes to construct 13 single family homes on the site, with four of the homes fronting on Richmond Road and nine of the homes accessed by Tupelo Court, a newly created private street; and

WHEREAS, the applicant states that three of the homes are proposed to be constructed in the bed of a mapped street known as Mace Street, and two of the homes are proposed to be constructed in the bed of a mapped street known as Ascot Avenue; accordingly, the applicant seeks a waiver of Section 35 of the General City law for the construction of five homes in the bed of a mapped street; and

WHEREAS, the other eight homes in the proposed development do not require a waiver of Section 35 of the General City Law, and therefore are not included in the subject application; and

WHEREAS, by letter dated January 12, 2011, the Department of Transportation (“DOT”) states that it has reviewed the project and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, by letter dated September 26, 2011, the Department of Environmental Protection (“DEP”) states that the Amended Drainage Plan No. D-3 (R-2)/D-4 (R-1), dated March 17, 2005, does not show any future sewers in the portions of mapped Mace Street and mapped Ascot Avenue at issue, but does show stabilized outlets at the intersection of Mace Street and mapped Call Street which will discharge storm flow into the referenced property; and

WHEREAS, DEP further states that, based on the June 28, 2011 map submitted by the applicant, which shows the DEP easement area which will be available to accept the storm flow discharge from the above-mentioned stabilized outlets, and based on the easement document submitted by the applicant for the portion of the property not to be developed on lot 36, it has no

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# MINUTES

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objections to the proposed application; and

WHEREAS, by letter dated December 7, 2010, the Fire Department states that it objects to the construction of any buildings within the bed of a mapped street (including the construction of the proposed homes in the bed of Ascot Avenue and Mace Street) because such streets should be opened in order to improve emergency response in the area; and

WHEREAS, in response, the applicant states that it made a good faith attempt to utilize and open the existing mapped but unbuilt streets on the site, however, the New York State Department of Environmental Conservation (“DEC”) would not allow the existing streets on the site to be opened because they are within Freshwater Wetland and Freshwater Wetland Adjacent Area; and

WHEREAS, the applicant submitted a letter from DEC dated March 20, 2012 which states that it issued a freshwater wetlands permit for the construction of 13 single family homes on the site, which keeps portions of the beds of St. Andrews Road, Mace Street, and Ascot Avenue unbuilt in perpetuity to preserve and protect freshwater wetlands and their benefits, and the street beds will not be opened and developed on the property controlled by the terms of the cited DEC permit; and

WHEREAS, by letter dated March 6, 2012, the Fire Department states that it reviewed the proposed site plan and all conditions relative to building access roads are in compliance with the 2008 Fire Code; and

WHEREAS, accordingly, the Board acknowledges the stated policy of the Fire Department that all mapped streets be opened, but finds that the applicant has submitted sufficient evidence to warrant approval of the proposed construction based on the inability to open the mapped but unbuilt streets on the site due to the requirements of the DEC freshwater wetlands permit, in conjunction with the Fire Department’s acknowledgment that the proposed Tupelo Court will fully comply with the 2008 Fire Code; and

WHEREAS, in response to the concerns raised by the Opposition regarding the construction within the Freshwater Wetlands, flooding, and the need to undergo an environmental assessment of the site, the applicant notes that more than half of the site is being preserved in its natural state, the proposed construction will only take place within the Freshwater Wetlands Adjacent Area and not within the Freshwater Wetlands, and that DEC issued a freshwater wetlands permit for the proposed construction, which incorporated an environmental review that followed SEQR regulations; and

WHEREAS, in response to the Opposition’s claim that the proposal does not satisfy the findings of ZR § 72-21 and that it creates potential zoning non-compliances, the Board notes that the findings under ZR § 72-21 are not applicable to an application under Section 35 of the General City Law, and that all issues related to zoning on the site are subject to review and approval by the Department of Buildings; and

WHEREAS, as to the Opposition’s contention that the proposal must be reviewed by DCP, the applicant submitted a letter from DCP stating that the proposed project will require Special Natural Area District authorizations and review by the City Planning Commission, but that the project requires a

Board determination before an application can be filed with DCP; and

WHEREAS, in response to the Opposition’s concerns regarding a lack of parking, the applicant notes that off-street parking spaces will be provided for the proposed homes, the proposed Tupelo Court will be built out to a width of 38 feet such that parking can be provided on that street, and Richmond Road will be widened so that additional parking can be provided on that street; and

WHEREAS, while the Board recognizes the concerns expressed by the Opposition, such considerations are not part of an application to permit construction within the bed of a mapped street under Section 35 of the General City Law, and therefore are not subject to the Board’s review; and

WHEREAS, the Board notes that the construction must comply with all requirements of the Zoning Resolution; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decisions of the Staten Island Borough Commissioner, dated May 10, 2010, acting on Department of Buildings Application Nos. 520048948, 520048957, 520048984, 520048975, and 520048966, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 20, 2012” – (2) sheets; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT all necessary DEC and DEP approvals must be obtained prior to the issuance of DOB permits;

THAT the necessary DCP review and authorization must be obtained prior to the issuance of DOB permits;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 24, 2012.

**\*The resolution has been revised to correct the Plans Dates which read: ... “ Received March 20, 2012” – (3) sheets”... now reads: ... “ Received March 20, 2012” – (2) sheets”. Corrected in Bulletin No. 19, Vol. 97, dated May 9, 2012.**

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# BULLETIN

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AND APPEALS

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Volume 97, No. 21

May 23, 2012

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## DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

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EILEEN MONTANEZ

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129-11-BZ	465 Carroll Street, Brooklyn
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# DOCKET

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New Case Filed Up to May 15, 2012  
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**149-12-BZ**

154 Girard Street, between Hampton Avenue and Oriental Boulevard., Block 8749, Lot(s) 265, Borough of **Brooklyn, Community Board: 15**. The premises is improved with an existing residential structure (single family home) which is a two story dwelling with a cellar. The requested approval seeks permission to enlarge the existing single family residential structure in accordance with the provisions of Zoning Resolution 73-622. R3-1 district.  
-----

**150-12-BZ**

39 West 21st Street, north side of West 21st Street, between 5th and 6th Avenues., Block 823, Lot(s) 17, Borough of **Manhattan, Community Board: 5**. Special Permit to allow a physical culture establishment in a C6-4A zoning district. C6-4A district.  
-----

**151-12-A**

231 East 11th Street, north side of E. 11th Street, 215' west of the intersection of Second Avenue and E. 11th Street., Block 467, Lot(s) 46, Borough of **Manhattan, Community Board: 3**. Appeal from a DOB determination which denied owner's request to lift a stop work order and thereby legalize an amateur radio antenna on the roof of the premises (previously legalized by the owner under ApplicationNo. 12021381). DOB's denial is contrary to the Zoning Resolution and to federal laws and regulations which strongly favor the maintenance of amateu radio equipment and which preempt local ordinances to the contrary. R8B district.  
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**152-12-BZ**

146-61 105th Avenue, north side of 105th Avenue, 34.65 southwest of intersection of 105th Avenue and Sutphin Boulevard., Block 10055, Lot(s) 19, Borough of **Queens, Community Board: 12**. Application filed to permit construction of a cellar and four-story mixed use building with commercial use on first floor and three dwelling units on upper floors on a vacant lot that does not provide a required side yard (3' proposed,8' required). C2-4 in R6A district.  
-----

**153-12-BZ**

24/34 Cobek Court, south side, 182.0' west of Shell Road, between Shell Road and West 3rd Street., Block 7212, Lot(s) 59, Borough of **Brooklyn, Community Board: 13**. Special Permit (§73-36) to legalize the space for a physical culture establishment (Fight Factory Gym). M1-1 in OP zoning district. M1-1inOP district.  
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**154-12-BZ**

1202 East 22nd Street, West side of East 22nd Street, between Avenue K and Avenue L, Block 7621, Lot(s) 59, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single family residence located in a residential (R2) zoning district. R2 district.  
-----

**155-12-BZY**

511 Ninth Avenue, southwest corner of Ninth Avenue and West 39th Street (block bounded by West 38th Street and 10th Avenue)., Block 736, Lot(s) 33, Borough of **Manhattan, Community Board: 4**. Extension of time (§11-332) to complete construction of a minor development commenced under the previous zoning. C1-7A district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JUNE 12, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 12, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**313-77-BZ**

APPLICANT – Goldman Harris LLC, for Gilsey House, owner.

SUBJECT – Application April 13, 2012 – Amendment to a previously granted Variance (§72-21) for the conversion of a manufacturing building to residential occupancy with a duplex penthouse structure which was never built. The proposal is to construct a substantially smaller, one-story penthouse with a roof top deck enlargement that is entirely within the approved envelope. M1-6 zoning district.

PREMISES AFFECTED – 1200 Broadway, southeast corner of West 29<sup>th</sup> Street and Broadway, Block 831, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**  
-----

**292-55-BZ**

APPLICANT – Alfonso Duarte, for Narkeet Property Inc., owner.

SUBJECT – Application April 2, 2012 – Application to extend term of variance and to waive the Rules of Practice and Procedure. R3-2 zoning district.

PREMISES AFFECTED – 239-15 Jamaica Avenue, northwest corner of 240<sup>th</sup> Street, Block 8001, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**  
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**163-04-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee.

SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously approved Special Permit (73-63) for the operation of a Physical Culture Establishment (*Crunch Fitness*) which expired on April 24, 2011; Waiver of the Rules. R7A (C2-4) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and St. Felix Street, Block 2096, Lot 66, 69, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**  
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**APPEALS CALENDAR**

**15-12-A & 158-12-A**

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 29-01 Borden Realty Co., LLC, owner; Van Wagner Communications, LLC, lessee.

SUBJECT – Application January 23, 2012 – Appeal challenging the Department of Buildings' determination that an outdoor accessory sign and structure is not a legal non-conforming accessory use pursuant to ZR §52-00. M3-1 Zoning District.

PREMISES AFFECTED – 29-01 Borden Avenue, bounded by Newton Creek, Borden Avenue, Hunters Point Avenue and 30<sup>th</sup> Avenue, Block 292, Lot 1, Borough of Queens.

**COMMUNITY BOARD #4Q**  
-----

**24-12-A & 147-12-A**

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 12<sup>th</sup> Avenue Realty Holding Corp., owner; Mizey Realty Co., Inc., lessee.

SUBJECT – Application February 2, 2012 & May 8, 2012 – Appeal challenging the Department of Buildings determination that an outdoor accessory sign and structure is not a legal non-conforming use pursuant to ZR §52-00. M1-2 Zoning district.

PREMISES AFFECTED – 2368 12<sup>th</sup> Avenue, bounded by Henry Hudson Parkway, West 134<sup>th</sup> Street, 12<sup>th</sup> Avenue and 135<sup>th</sup> Street, Block 2005, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #9M**  
-----

**JUNE 12, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 12, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**168-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 27, 2011 – Pursuant to Z.R. §72-21, as amended, to request a variance of floor area, open space ratio, lot coverage, side yards, rear yard, height, setback, planting, landscaping and parking regulations in order to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*). 5(OP),R6A(OP) and R5(OP subdistrict) zoning district.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**191-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zerillo Family Trust, owner.

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the In-Part Legalization and an Enlargement to an existing single family home contrary to ZR §23-141(b) for maximum allowable floor area. R 4-1 zoning district.

PREMISES AFFECTED – 1246 77<sup>th</sup> Street, between 12<sup>th</sup> and 13<sup>th</sup> Avenues, Block 6243, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**48-12-BZ**

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations ZR §121-11. C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of Manhattan.

**COMMUNITY BOARD #4M**

-----

**78-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Jonathan P. Rosen, owner; End 2 End Game Training LLC, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*End 2 End*). C6-4A zoning district.

PREMISES AFFECTED – 443 Park Avenue South, northeast corner of East 30<sup>th</sup> Street, Block 886, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

-----

**91-12-BZ**

APPLICANT – Jorge Lee, for Juan Noboa, owner.

SUBJECT – Application April 11, 2012 – Re-instatement (§11-411) of a previously approved variance granted under BSA Cal. No. 1003-48-BZ permitting commercial retail (UG 6) in a residential district, which expired on March 29, 1998. R8 zoning district.

PREMISES AFFECTED – 846 Gerard Avenue, east side of Gerard Avenue, 132.37' south of East 161<sup>st</sup> Street, Block 2474, Lot 35, Borough of Bronx.

**COMMUNITY BOARD #4BX**

-----

**111-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Wells 60 Broad Street, LLC, owner; Bree and Oliver NYC Inc., lessee.

SUBJECT – Application April 19, 2012 – Special Permit application pursuant to Z.R.§73-36 to permit the proposed physical culture establishment (*Cross Fit Wall Street*) at a portion of the ground floor of the premises which is located within a C5-5(LM) zoning district.

PREMISES AFFECTED – 60 New Street, 54-68 Broad Street; 52-66 New Street, north of Beaver Street, Block 24, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 15, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.  
Absent: Commissioner Montanez.

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## SPECIAL ORDER CALENDAR

### 808-55-BZ

APPLICANT – Sheldon Lobel, P.C., for 35 Bell Realty Inc., owner; Cumberland Farms, Inc., lessee.

SUBJECT – Application February 14, 2012 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) with accessory convenience store which expired on March 27, 2012; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, southwest corner of the intersection formed by Bell Boulevard and 35<sup>th</sup> Avenue, Block 6169, Lot 6, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Lisa Lee.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term of a previously granted variance to permit the operation of a gasoline service station with accessory uses, which expired on March 27, 2011; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, with a continued hearing on May 1, 2012, and then to decision on May 15, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, but requests that measures be taken to improve the on-site traffic circulation; and

WHEREAS, the subject site is located on the southwest corner of Bell Boulevard and 35<sup>th</sup> Avenue, within a C2-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 3, 1956 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on March 27, 2001, the Board granted a ten-year extension of term, which expired on March 27, 2011; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the metal shed located at the rear of the site; and

WHEREAS, in response, the applicant states that the shed has been located behind the service station building for approximately 14 years, and that it is used for the storage of miscellaneous items related to the upkeep of the site; and

WHEREAS, the applicant submitted a photograph reflecting that the shed is the same height as the masonry wall on the site and therefore cannot be seen by the adjacent property owner; and

WHEREAS, the applicant also submitted revised plans in response to the Community Board’s concerns about on-site traffic circulation, which reflect (1) the installation of “No Parking” signs along the southeast lot line, and (2) the re-stripping of the parking area to increase the number of parking spaces from two to three; and

WHEREAS, based upon the above, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 3, 1956, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 27, 2011, to expire on March 27, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received April 17, 2012’- (5) sheets; and *on further condition*:

THAT the term of the grant will expire on March 27, 2021;

THAT the site will be maintained free of debris and graffiti;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals May 15, 2012.

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## 188-78-BZ

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Amendment (§11-413) to a previously granted Variance (§72-21) to add (UG16) automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81<sup>st</sup> Street, Block 6313, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for an automobile repair shop and auto laundry (Use Group 16), pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on January 24, 2012 after due notice by publication in *The City Record*, with continued hearings on February 28, 2012 and April 24, 2012, and then to decision on May 15, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application with the conditions that (1) there be no double parked vehicles, and (2) all bodywork be conducted inside of the building; and

WHEREAS, the applicant submitted letters from New York City Council Member Vincent J. Gentile and New York State Assembly Member Peter J. Abate, Jr. in support of this application; and

WHEREAS, the site is located on the southwest corner of New Utrecht Avenue and 81<sup>st</sup> Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1929 when, under BSA Cal. No. 280-29-BZ, the Board granted a variance to permit the construction of a gasoline station repair shop and automobile laundry at the site; and

WHEREAS, on July 18, 1978, under the subject calendar number, the Board permitted the construction of a one-story enlargement to the accessory structure on the site and the change of use to an automobile repair shop, pursuant to ZR §§ 11-412 and 11-413; and

WHEREAS, most recently, on February 27, 1979, the Board granted an amendment to permit a change in the

dimensions of the previously-approved one-story enlargement; and

WHEREAS, the applicant now seeks an amendment to permit the site to be used for car sales and auto body work (Use Group 16), in addition to its existing use as an automobile repair shop (Use Group 16); and

WHEREAS, specifically, the applicant states that the addition of auto body work will allow the owner to repair dents, scratches, and other external damages, as well as add a spray paint booth for the spray painting of cars; and

WHEREAS, the applicant notes that it withdrew a prior application for the subject amendment submitted on April 1, 2010, in order to comply with the conditions of the Board's previous resolution and in response to the Board's request that the owner cleanup the site; and

WHEREAS, the applicant states that following the withdrawal of the prior application, the owner has undertaken the following measures to clean and upgrade the site: (1) the interior and exterior of the entire facility has been repainted; (2) the chain-link fence has been removed; (3) all garbage and debris has been cleared; (4) the graffiti has been removed; (5) curb bumpers have been provided on the lot; and (6) flower pots have been placed around the site; and

WHEREAS, the applicant initially proposed to maintain the existing automobile laundry use and to use all five parking spaces on the site for used car sales; and

WHEREAS, in response to concerns raised by the Board regarding the lack of space on the site for both a spray paint booth and used car sales in addition to the existing automobile repair shop and automobile laundry use, the applicant revised its proposal to remove the automobile laundry use at the site and to reduce the number of parking spaces for used car sales to two, with the other three spaces reserved for cars awaiting repair; and

WHEREAS, the applicant also submitted revised plans reflecting the elimination of the curb cut on 81<sup>st</sup> Street and the replacement of the curb, and submitted a circulation plan reflecting the anticipated circulation pattern at the site; and

WHEREAS, at hearing, the Board raised concerns about the proposed location of the spray paint booth in the southeast corner of the building, adjacent to residential uses; and

WHEREAS, in response, the applicant submitted revised plans reflecting the relocation of the spray paint booth to the southwest corner of the site and the corresponding relocation of the proposed exhaust for the spray paint booth, which will be oriented to vent away from the adjacent residential uses; and

WHEREAS, the applicant notes that the spray paint booth will only use water-based paints, and submitted the specifications for the proposed spray paint booth, which will comply with all Federal Occupational Safety and Health Administration and National Fire Protection Association regulations and be installed to comply with all Fire and Building Code requirements; and

WHEREAS, the applicant states that the hours of operation will be reduced to Monday through Friday, from

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8:00 a.m. to 5:00 p.m., Saturday, from 8:00 a.m. to 1:00 p.m., and closed on Sunday; the previously-approved hours of operation were Monday through Saturday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant states that all auto body work will be conducted inside the enclosed building; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a change in use; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 18, 1978, so that as amended this portion of the resolution shall read: “to permit the conversion of the existing automobile repair shop and automobile laundry to an automobile repair shop with automobile body work and used car sales pursuant to ZR § 11-413; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received May 2, 2012’ –(6) sheets; and *on further condition*:

THAT the term of this grant will expire on May 15, 2017;

THAT there will be no double-parked vehicles at the site;

THAT all body work will take place inside the enclosed building;

THAT a maximum of two parking spaces be utilized for the sale of used cars;

THAT the site be maintained free of debris and graffiti;

THAT the hours of operation will be Monday through Friday, from 8:00 a.m. to 5:00 p.m., Saturday, from 8:00 a.m. to 1:00 p.m., and closed on Sunday;

THAT all signage will comply with C1 district regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 310092020)

Adopted by the Board of Standards and Appeals May 15, 2012.

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## 196-49-BZ

APPLICANT – Walter T. Gorman, P.E., for 1280 Allerton Avenue Realty Corp., owner; Don-Glo Auto Service Center, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of an approved variance for the continued operation of a gasoline service station (*Sunoco*) which expired on September 30, 2005; Amendment for the addition of a lift in the service building and an air tower and car vacuum on the site. R4 zoning district.

PREMISES AFFECTED – 1280 Allerton Avenue, south west corner of Wilson Avenue. Block 4468, Lot 43. Borough of Bronx.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

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## 849-49-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, Esq., for Directors of Guild of America, Inc., owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued use of a motion picture theater which expired on January 31, 2012. C5-3(MID) zoning district.

PREMISES AFFECTED – 110 West 57<sup>th</sup> Street, southside of 57<sup>th</sup> Street, between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 1009, Lot 40, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Randall Minor.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

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## 12-91-BZ

APPLICANT – Rampulla Associates Architects, for Miggy’s Too Delicatessen Corp., owner.

SUBJECT – Application March 12, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 food store (*Bayer’s Market*) which expired on April 21, 2012; Amendment to eliminate landscaping, legalize an outdoor refrigeration unit, eliminate hours for garbage pickup, and request to eliminate the term of the variance. R3-2 zoning district.

PREMISES AFFECTED – 2241 Victory Boulevard, north

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south corner of Victory Boulevard and O'Connor Avenue, Block 463, Lot 25, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for continued hearing.

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## 136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corp., owner.

SUBJECT – Application April 20, 2012 – Extension of Time to complete Construction and obtain a Certificate of Occupancy for a previously granted Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on March 21, 2012. M1-4/R-7A zoning district.

PREMISES AFFECTED – 11-11 44<sup>th</sup> Drive, north side of 44<sup>th</sup> Drive between 11<sup>th</sup> Street and 21<sup>st</sup> Street, Block 447, Lot 13, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

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## 290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application February 2, 2012 – Amendment of an approved variance (§72-21) for a new residential building with ground floor commercial, contrary to use regulations. The amendment requests an increase in commercial floor area and a decrease in the residential floor area. M1-5B zoning district

PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for deferred decision.

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## APPEALS CALENDAR

### 25-12-A

APPLICANT – Slater & Beckerman, LLP for F.B Capital Inc., owners

SUBJECT – Application February 2, 2012 – Appeal challenging a determination by the Department of Buildings not to revoke the permit associated with the reconstruction of a building, which includes construction in the required rear yard and does not comply with the requirements of ZR §54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70<sup>th</sup> Street, south side of East 70<sup>th</sup> Street, between Park Avenue and Lexington Avenue, block 1404, Lot 67, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Stefanie Marazzi

**ACTION OF THE BOARD** – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated January 6, 2012 (the “Final Determination”), to uphold its Intent to Revoke Approval and Permit Letter associated with Permit No. 110169406 (the “Permit”), for the construction of a building at the subject site (the “Building”); and

WHEREAS, the Final Determination reads, in pertinent part:

The Department has reviewed the information you provided and, as further described below, has determined that you have not sufficiently demonstrated that Objection 1, 2, and 4 should be removed.

The Department has determined that Objection Nos. 1, 2, and 4 should not be removed because the plans filed with the Job Application are not in compliance with Section 54-41 of the Zoning Resolution (the “ZR”). Certificate of Occupancy No. 110596 states that the building contained a Use Group 2 one-family residence and a Use Group 4 community facility medical office. The building was non-complying because the medical office and a portion of the residence were located in the required rear yard of the Premises and exceeded lot coverage limitation. The building

1 (Footnote from the original) In your December 19, 2011 letter you also indicate that Objection No. 3 has been resolved with a filing of a Post Approval Amendment (“PAA”). As of the date of this letter, this Objection has not been resolved because the Department has not reviewed the PAA and an appointment has not yet been made with the Department to address the Objection.

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contained a one family “residence” and therefore, only the residential portion of the building may be reconstructed per Section 54-41 of the ZR, given that more than 75% of the building was demolished.

Per Section 54-41 of the ZR, a one family “residence” may be reconstructed provided that the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance with the applicable bulk regulations. Per Section 12-10 of the ZR, a “residence” is one or more dwelling units including common spaces. Therefore, the portion of the building containing the Use Group 2 “residence” may be reconstructed but the portion of the building containing the Use Group 4 medical office cannot be reconstructed pursuant to Section 54-41 of the ZR. However, such space may be constructed to the extent permitted by the underlying district regulations and used for any use permitted in the zoning district.

Although the objections cannot be removed, in compliance with a Temporary Restraining Order entered on December 22, 2011 by the Honorable Eileen A. Rakower in *FB Capital, Inc. V. NYC Department of Buildings and Robert L. LiMandri*, Index No. 1114312/11, the Department is not, at this time, revoking the Permit; and

WHEREAS a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 15, 2012; and

WHEREAS, the appeal was filed on behalf of the owners of 112 East 70<sup>th</sup> Street (the “Appellant”) who are neighbors to the subject site; and

WHEREAS, a separate appeal application was filed by the owners of the subject building (the “Owners”) and was heard concurrently and decided on the same day, pursuant to BSA Cal. No. 27-12-A; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commission Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of East 70<sup>th</sup> Street, between Park Avenue and Lexington Avenue, within an R8B zoning district within Limited Height District 1A; and

WHEREAS, the subject site has a width of 19’-10”, a depth of 100’-5”, and a total lot area of approximately 1,991.6 sq. ft.; and

WHEREAS, the site is occupied by a five-story (including penthouse) building with a basement, a cellar, and a sub-cellar; and

WHEREAS, the Building has the following parameters: a total floor area of 7,536 sq. ft. (3.78 FAR), with 6,406 sq. ft. of residential floor area and 1,130 sq. ft. of community facility (doctor’s office) floor area, a lot coverage of 84 percent, and a total height of 60’-0”; and

WHEREAS, a three-story portion of the Building

(portions of the basement, first floor, and second floor) encroaches into the required 30’-0” rear yard to varying degrees; an L-shaped portion of the basement designated for doctor’s office use encroaches a total of approximately 395.6 sq. ft. into the rear yard, including a 110 sq. ft. one-story portion at the northeast corner of the basement; an approximately 9’-2” by 30’-0” portion of the first floor encroaches into the rear yard; and an approximately 9’-2” by 21’-7” portion of the second floor encroaches into the rear yard; and

WHEREAS, the Building was issued a Certificate of Occupancy No. 110596 on December 3, 1996, which states:

Cellar – Boiler Room, Storage  
Basement – Comm. – Doctor’s Office, Res. –  
Entry Hall to Dwelling Above  
1<sup>st</sup> Floor – Res. – ¼ Dwelling Unit  
2<sup>nd</sup> Floor – Res. – ¼ Dwelling Unit  
3<sup>rd</sup> Floor – Res. – ¼ Dwelling Unit  
4<sup>th</sup> Floor – Res. – ¼ Dwelling Unit  
One (1) Family Dwelling; and

WHEREAS, at the time of the issuance of the Certificate of Occupancy, the doctor’s office and a portion of the residential use were located within the 30-ft. rear yard; at that time, a doctor’s office was a permitted encroachment into the required rear yard, but zoning text changes have rendered the encroachment non-complying; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the Owners of the subject building provided testimony in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, in May 2008, the Owners filed an Alteration Type 1 application (No. 110169406) to renovate the Building and to change the doctor’s office use on the basement floor to residential use; and

WHEREAS, on April 20, 2009, DOB approved the Alteration Type 1 application and on May 8, 2009 issued the Permit; and

WHEREAS, subsequently, the Owners filed and DOB approved post approval amendments and other construction requirements; and

WHEREAS, during the following months and years, DOB received several complaints from the Appellant stating that the project did not comply with zoning regulations, which led DOB to audit the plans and at various times revoke the permits, issue stop work orders, and rescind same; and

WHEREAS, on December 6, 2011, DOB issued a notice of intent to revoke with a final version of audit objections, which state that (1) only the residential portion of the building may be reconstructed given that 75 percent of the building was demolished (ZR § 54-41), (2) construction of a community facility in the rear yard is not a permitted obstruction, (3) demonstrate that a change of use from doctor’s office to residential use complies with ZR regulations for change of use and bulk (ZR § 24-33), and (4) the proposed lot coverage exceeds 70 percent, contrary to



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ZR § 24-11; and

WHEREAS, the Owners demolished the majority of the Building and reconstructed it with the same non-complying conditions that existed prior to the demolition, which include the one- and three-story encroachments into the required 30-ft. rear yard and lot coverage in excess of what is permitted by zoning district regulations; and

WHEREAS, the Owners seek to maintain the entire Building with all non-complying conditions, which it asserts are legally non-complying and were reconstructed pursuant to the provisions set forth at ZR § 54-41; and

WHEREAS, the Owners state that it would have preferred residential use on the basement level but that DOB only identified the issue of the increase in the degree of non-compliance of the Building's court after the extension was demolished, and required the return to a doctor's office use so that the Appellant could retain the envelope of the building already approved and permitted; and

WHEREAS, after DOB issued audit objections which form the basis of the Final Determination, the Owners brought a proceeding in New York State Supreme Court entitled Matter of FB Capital v. New York City Department of Buildings, Index No. 114312/11 to prevent DOB from revoking the building permits for the portion of the application related to the residence and requiring it to continue inspections and issue a Temporary Certificate of Occupancy; and

WHEREAS, the court issued a temporary restraining order preventing DOB from revoking the permits pending decision on the merits of the petition; and

WHEREAS, the Owners assert that the Building has been constructed as follows: the 395.6 sq. ft. of basement level encroaching in the rear yard includes approximately 285.6 sq. ft. beneath the residential portion of the Building constructed in 1922 and 110 sq. ft. in a separate one-story portion constructed in 1996 (when zoning allowed for doctor's office use to encroach into the rear yard and such encroachment would have been complying); and

## RELEVANT ZONING RESOLUTION PROVISIONS

### ZR Section 12-10

*Residence, or residential* (italicized text adopted on 9/9/04, subsequently amended as reflected in the non-italicized text below)

A "residence" is a #building# or part of a #building# containing #dwelling units# or #rooming units#, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings#

*used for #community facility uses#.*

- (d) in a #mixed building#, that part of the #building# used for any non-#residential uses#, except #accessory# to #residential uses#.

"Residential" means pertaining to a #residence#.

\* \* \*

Residence, or residential (2/2/11)

A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

"Residential" means pertaining to a #residence#.

\* \* \*

Single-family residence (2/2/11)

A "single-family residence" is a #building# containing only one #dwelling unit#, and occupied by only one #family#.

\* \* \*

ZR Section 54-41

Permitted Reconstruction

If a #non-complying building or other structure# is damaged or destroyed by any means, including any demolition as set forth in this Section, to the extent of 75 percent or more of its total #floor area#, such #building# may be reconstructed only in accordance with the applicable district #bulk# regulations, except in the case of a one- or #two-family residence#, such #residence# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations. If the extent of such damage or destruction is less than 75 percent, a #non-complying building# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations; and

## THE ISSUES ON APPEAL

WHEREAS, the Appellant seeks a determination that the encroachment of the Building located in the required

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rear yard must be removed and may not be reconstructed pursuant to ZR § 54-41 and that DOB has failed to properly enforce the provisions of ZR § 54-41 by allowing such reconstruction; and

WHEREAS, the Appellant requests that the Board revoke the Permit and determine that the portions of the Building located in the rear yard must be removed and may not be reconstructed pursuant to ZR § 54-41; and

WHEREAS, the Appellant states that it disagrees with the portion of the Final Determination stating that the “residential portion of the building may be reconstructed” in the required rear yard, for the following reasons: (1) the Building is a mixed-use residential and community facility building which may not benefit from the reconstruction exception of ZR § 54-41 which allows for reconstruction after 75 percent of the floor area has been demolished, (2) the Building is not a single-family home and, thus, its non-complying conditions cannot be reconstructed nor can conditions that increase the degree of non-compliance, and (3) the Building was illegally enlarged in the 1960s or 1970s and therefore is not a lawful “non-complying building” as defined in ZR § 12-10 and therefore may not take advantage of the reconstruction provisions of ZR § 54-41; and

## I. THE CLASSIFICATION OF THE BUILDING

WHEREAS, the Appellant asserts that the Building is a mixed-use residence and community facility building which may not benefit from the reconstruction exception of ZR § 54-41 which allows for a “one- or two-family residence” to be reconstructed provided it does not create a new non-compliance or increase the degree of non-compliance with bulk regulations; and

WHEREAS, the Appellant asserts that because it does not fit within the exemption for one- or two-family residences, it can only be constructed pursuant to current zoning district regulations; and

WHEREAS, the Appellant asserts that once 75 percent of a non-complying mixed-use residential building (and not a single-family home) is demolished, it is not covered by ZR § 54-41; and

WHEREAS, the Appellant asserts that because the Building contains a doctor’s office in the basement, per the 1996 Certificate of Occupancy, and a dwelling unit on the first through fourth floors it may not be classified as a “single-family residence” as defined at ZR § 12-10; and

WHEREAS, the Appellant asserts that a “single-family residence” contains only one dwelling unit and is occupied by only one family; and

WHEREAS, the Appellant asserts that any other interpretation of a “single-family residence” would result in an absurd outcome such as a mixed commercial and residential building with only one dwelling unit being characterized as a “single-family residence;” and

WHEREAS, DOB contends that the Appellant incorrectly interprets the ZR § 12-10 definition of “single-family residence” (“a building containing only one dwelling unit, and occupied by only one family”) for the proposition that ZR § 54-41 should not apply to the reconstruction of the Building; and

WHEREAS, DOB asserts that, contrary to the Appellant’s claim, the Building does meet the definition of a “single-family residence,” as a “single-family residence” is a building that contains one dwelling unit and may contain other non-residential uses; and

WHEREAS, DOB adds that the 1996 Certificate of Occupancy reflects that the building contained a “Res.” single-family residence and a “Comm.” doctor’s office, and although the 1996 Certificate of Occupancy did not indicate the use groups associated with the particular uses, DOB interprets the permissible uses in the Building to be a Use Group 2 residential single-family residence and a Use Group 4 community facility medical office; and

WHEREAS, however, DOB disagrees with the Appellant that the inclusion of the community facility use prohibits the classification of the Building as a single-family residence; and

WHEREAS, DOB disagrees with the Owner that the entire Building is a residence which may be reconstructed after more than 75 percent of its floor area has been demolished, pursuant to ZR § 54-41; and

WHEREAS, DOB notes that ZR § 54-41 uses the term “one-family residence”<sup>1</sup> rather than “single-family residence,” and because the definition of “residence” specifically uses the term “dwelling units” and specifically excludes the word “building,” only that portion of the Building containing the one-family residence (i.e., the dwelling unit), including the non-complying residence located in the rear yard, may be reconstructed pursuant to ZR § 54-41; and

WHEREAS, the Owner cites to and agrees with DOB’s statement that “a ‘single-family residence’ is a building that contains one ‘dwelling unit’ and may contain other non-residential uses;” however, the Owner disagrees with DOB’s assertion that there is a distinction between “single-family residence” and “one-family residence,” the term used in ZR § 54-41; and

WHEREAS, the Owner states that if the Building is a “single-family residence” as DOB agrees, then it is also a “one-family residence,” because, contrary to DOB’s position, the two terms have the same meaning; and

WHEREAS, the Owner states that the use of the two terms within the ZR and the meaning attributed to them does not support the conclusion that there is any distinction between them; and

WHEREAS, accordingly, the Owner asserts that if DOB has admitted that a single-family residence may contain uses other than a dwelling unit and there is no basis to distinguish between a “single-family residence” and a “one-family residence,” DOB must conclude that the Owner’s construction of ZR § 54-41 is correct and the entire Building may be reconstructed; and

## II. THE PORTION OF THE BUILDING TO BE RECONSTRUCTED

WHEREAS, regardless of the classification of the

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<sup>1</sup> “One-family residence” is not a defined term under ZR § 12-10.

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Building, the Appellant challenges DOB's assertion that any part of the basement encroachment in the rear yard may be reconstructed for residential use because it finds that such construction increases the degree of non-compliance; and

WHEREAS, the Appellant questions DOB's statement on the record that the portion of the Building occupied by residential use may be reconstructed but that the portion of the Building occupied by community facility use can only be constructed to the extent permitted by the underlying district regulations; and

WHEREAS, the Appellant notes that the underlying district regulations do not allow residential buildings as permitted obstructions in the rear yard and that once the community facility portion of the Building is removed, the Building is residential and governed by residential bulk regulations which prohibit virtually any enclosed use in the rear yard; and

WHEREAS, the Appellant asserts that any reconstruction of the community facility portion would be contrary to ZR § 54-41 and would increase the degree of non-compliance of the rear yard; and

WHEREAS, the Appellant asserts that the reconstruction of the basement level community facility would reflect an increase in the degree to which the yard is obstructed, contrary to ZR § 23-44, which does not allow residential buildings as a permitted obstruction in required rear yards; and

WHEREAS, the Appellant cites to the ZR § 12-10 definition of "yard" as part of a zoning lot "extending open and unobstructed from the lowest level to the sky along the entire length of a lot line. . ."; and

WHEREAS, the Appellant contends that if the community facility space in the basement were demolished, the yard would be "obstructed" above the basement level but unobstructed at the basement level which is a lesser degree of non-compliance thus, allowing reconstruction of the lowest level would allow for a new obstruction and increase the degree of non-compliance contrary to ZR § 54-41; and

WHEREAS, DOB asserts that the non-complying residential portion of the Building located in the rear yard may be reconstructed because ZR § 54-41 permits reconstruction of the residential portion of a one-family residence that has been demolished in excess of 75 percent; and

WHEREAS, based on the language of ZR § 54-41 and the ZR § 12-10 definitions of "residence" and "dwelling unit" from the February 2, 2011 Key Terms Clarification Text Amendment, DOB determined that only the portion of the Building containing the Use Group 2 residence (the dwelling unit including common spaces) may be reconstructed, while the portion of the Building containing the Use Group 4 doctor's office cannot be reconstructed because it is a community facility, not a "dwelling unit," and therefore not a "residence;" and

WHEREAS, however, DOB finds that the space formerly occupied by the doctor's office below the residence may be constructed since construction in that space would not increase the existing degree of non-compliance or create

a new non-compliance; and

WHEREAS, by letter dated April 26, 2012, the Department of City Planning (DCP) states that it supports DOB's response to the Appellant and agrees with DOB's interpretation of the meaning of ZR § 54-41's reference to "residence;" and

WHEREAS, specifically, DCP states that "such 'residence'" as used in ZR § 54-41 refers to the residential portion of a building that contains one or more dwelling units; and

WHEREAS, DCP states that prior to the Key Terms Text Amendment, the definition of "residence" referred to dwelling units or rooming units and following the amendment, the definition of "residence" was modified to include common spaces such as hallways and lobbies; and

WHEREAS, DCP asserts that the purpose of the change was to clarify that the common areas of a residential building are considered residential and that the change was not substantive as it was consistent with DOB's prior interpretations and practices; and

WHEREAS, DCP states that its reading is consistent with the intent of ZR § 54-41 to grant individual home owners a special exception to the general prohibition upon reconstruction of non-complying buildings which have been damaged or destroyed in excess of 75 percent of the floor area; and

WHEREAS, DCP asserts that a public policy goal is served by allowing owners of one- and two-family homes to reconstruct their dwelling space and that such public policy does not logically extend to the reconstruction of non-complying non-residential space; and

WHEREAS, accordingly, DCP concludes that ZR § 54-41 only allows for the reconstruction of non-complying portions of one and two family residences occupied by dwelling units and not non-residential uses; and

WHEREAS, in response, the Appellant wrote a letter to DCP requesting it clarify whether the reconstruction of the portion of the Building formerly occupied by the doctor's office beneath the residential use may be reconstructed or whether it reflects an increase in the degree of noncompliance and may not; and

WHEREAS, the Appellant's position is that allowing the reconstruction of the non-complying portion of the Building formerly occupied by the doctor's office to be occupied by any use will increase the degree of non-compliance in the rear yard, contrary to ZR §§ 54-41 and 23-44; and

WHEREAS, the Appellant asserts that allowing for reconstruction of the basement would allow for an obstruction at the basement level in addition to the obstructions on the residential first and second floors, which reflects an increased degree of non-compliance over just rebuilding the first and second floors and leaving the basement level open; and

WHEREAS, the Owner disagrees with DOB and DCP that the reference to "such 'residence'" in ZR § 54-41 refers only to the dwelling units in the one- or two-family residence since "residence" is a defined term and not

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synonymous with “dwelling unit;” and

WHEREAS, the Owner asserts that the definition of residence is intended to reference entire buildings rather than just the dwelling unit components as evidenced by the inclusion of the language “including one-family and two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels,” all of which are “buildings” that may contain not only residences but other uses; and

WHEREAS, the Owner maintains its position that the Building is a single-family residence and, accordingly, can be reconstructed in full pursuant to ZR § 54-41; and

### III. THE LEGALITY OF THE CONSTRUCTION

WHEREAS, the Appellant asserts that ZR § 54-41 only permits reconstruction of lawfully non-complying buildings and the Building is not a lawful “non-complying” building and may not benefit from the reconstruction provisions of ZR § 54-41; and

WHEREAS, the Appellant cites to the ZR § 12-10 definition of a non-complying building as “any lawful building which does not comply with any one or more of the applicable district bulk regulations either on December 15, 1961 or as a result of a subsequent amendment thereto;” and

WHEREAS, the Appellant asserts that to be “lawful,” the non-complying bulk must have complied with zoning when constructed; and

WHEREAS, the Appellant asserts that the extension in the rear yard was enlarged illegally when such enlargement would not have been permitted by zoning except for a one-story portion not exceeding 23 feet in height used for community facility use in the rear yard; and

WHEREAS, the Appellant asserts that the extension in the rear yard was enlarged to a two-story and basement brick extension sometime between 1967 and 1979 and, thus, is an illegal enlargement; and

WHEREAS, the Appellant asserts that no plans were filed with DOB for approval of the enlargement, which would not have been permitted pursuant to zoning regulations in effect at that time; and

WHEREAS, the Appellant asserts that the 1916 Zoning Resolution required a rear yard at the lowest level with a depth of at least ten percent of the depth of the lot, but not more than ten feet in depth and that 40 percent of the rear yard could be occupied by a building 18 feet above curb level; and

WHEREAS, the Appellant notes that since 1961, the Zoning Resolution has required a 30-ft. rear yard in residential zoning districts and therefore any residential enlargement within such rear yard would have been prohibited (ZR § 23-47); and

WHEREAS, however, the Appellant notes that the 1961 Zoning Resolution permitted a one-story community facility use not exceeding 23 feet in height as a permitted obstruction in the rear yard (ZR § 24-33 (b)) until 2009 when the ZR was amended to prohibit such obstruction beyond 100 feet of a wide street, any portion of a community facility building in a rear yard unless it is used for a “school, house of worship, college or university, or hospital and related facilities” (ZR § 24-33(b)(3)); and

WHEREAS, the Appellant relies on an Amendment K to the survey dated May 14, 1979 as evidence that the encroachment in the rear yard was constructed after the 1963 Certificate of Occupancy was issued; and

WHEREAS, the Appellant asserts that the second-story enlargement at the rear yard is not rendered legal by the fact that it was shown on the plans underlying the 1996 Certificate of Occupancy; and

WHEREAS, the Appellant cites to DOB job applications from 1905, 1922, 1948, a 1955 Sanborn Map, and a survey as amended from 1947-2007 as evidence that the Building’s rear enlargement occurred after 1961 when the zoning prohibited residential construction in the rear yard; and

WHEREAS, the Appellant asserts that historic documents reflect that there was only a two-story addition in the rear yard prior to 1961 and that after 1961, the zoning was amended to prohibit any further enlargements in the rear yard, and therefore the construction of the third story was illegal; and

WHEREAS, the Appellant makes the following assertions: (1) in 1905, the Building was enlarged with a one-story and basement extension in the rear yard, to a depth of 59 feet per a 1905 DOB job application; (2) in 1922, the two-story extension was extended horizontally toward the rear lot line resulting in a depth of 99 feet at the basement and first story, per a 1922 DOB job application; (3) the 1947 survey (the “Survey”) reflects a one-story and basement brick extension in the rear yard; (4) in 1948, there was “no change” to the size of the Building, as reflected on the 1948 Certificate of Occupancy; (5) the 1955 Sanborn Map shows a rear yard extension of only two stories; and (6) the 1979 survey amendment shows that between 1967 and 1979, a third story was added to the rear yard extension; and

WHEREAS, as to the authoritative weight to be given to the survey, the Appellant asserts that the Survey was prepared by a licensed surveyor and is the type upon which government agencies, licensed architects, and engineers rely; and

WHEREAS, the Appellant asserts that the Survey’s Amendment K reflects that between June 15, 1967 and May 15, 1979 the one-story and basement brick extension was enlarged to a two-story and basement brick extension and the building increased in height; and

WHEREAS, the Appellant asserts that such an increase in volume and height was prohibited by ZR §§ 23-44 and 23-47 after 1961; and

WHEREAS, on the point of legality, the Appellant concludes that the third story in the rear yard is illegal and thus the Building is not a non-complying building permitted to be demolished and reconstructed pursuant to ZR § 54-41; and

WHEREAS, the Appellant asserts that the 1996 Certificate of Occupancy is not dispositive as to the legality of the third story in part because since the Building was demolished, the Certificate of Occupancy issued in 1996 is no longer in effect and should have no relevance to DOB’s application of ZR § 54-41; and

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WHEREAS, the Appellant asserts that the rear ten feet of the third story of the building reflected in the plans underlying the 1996 Certificate of Occupancy was illegal under both the 1916 and 1961 zoning and could never have been lawfully built; and

WHEREAS, the Appellant finds that the Owners removal of that portion of the third story in its 2008 plans is an admission to its illegality; and

WHEREAS, as to the Appellant's claim that an illegal rear yard enlargement was constructed in violation of ZR § 24-33 sometime between 1963 and 1979, and is therefore not a lawful non-compliance, DOB finds that there is insufficient evidence to demonstrate the illegality of the rear yard enlargement; and

WHEREAS, DOB notes that the demolition and construction plans approved by DOB for the 1996 Certificate of Occupancy indicate the existence of a doctor's office and residential space in the required rear yard prior to the issuance of the 1996 Certificate of Occupancy; and

WHEREAS, DOB cites to New York City Charter Section 645(b)(3)(e), which requires that "every certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction, be and remain binding and conclusive on all agencies and officers of the city...;" and

WHEREAS, DOB contends that, since the 1996 Certificate of Occupancy has not been vacated or modified by the Board or a court of competent jurisdiction, DOB is unable to deem that the 1996 Certificate of Occupancy, which included plans indicating the existence of the rear yard enlargement, was issued in error; and

WHEREAS, DOB states that the Appellant's sole evidence that the rear yard enlargement is not a lawful non-compliance is the Survey containing notations from 1947 through 2007, including a visual examination dated May 14, 1979 labeled as "K," and based on DOB's review of the Survey, as well as the following records for the Building: a 1905 Job Application, a 1922 Job Application, a 1948 Job Application, a 1954 Building Notice, a 1955 Sanborn Map, a 1963 Alteration Job Application, the 1963 Certificate of Occupancy, the 1996 Certificate of Occupancy, and a 2005 Sanborn Map, it is unable to conclude that the rear yard enlargement was not constructed lawfully; and

WHEREAS, DOB states that it is also unable to conclude that the rear yard enlargement was not constructed lawfully because the Department records and additional information submitted by the Appellant do not contain enough information to sufficiently demonstrate when and at what heights the rear yard enlargement was constructed; and

WHEREAS, specifically, DOB states that the measurements and information included in the 1905 Job Application, the 1922 Job Application, the 1948 Job Application, the 1955 Sanborn Map, the 1963 Job Application, the 2005 Sanborn Map, and the Survey containing numerous notations from 1947 through 2007 do not provide the Department with sufficient evidence to reasonably and conclusively determine that the 1996 Certificate of Occupancy was issued in error; therefore,

pursuant to New York City Charter Section 645(b)(3)(e), the Department must abide by the lawfulness of the 1996 Certificate of Occupancy, which included the then-existing enlargement in the rear yard; and

WHEREAS, the Owner asserts that the Appellant has misread the requirements of the 1916 Zoning Resolution; specifically, the Owner asserts that as of the time of the 1948 Certificate of Occupancy, the Building was within a zoning district that required a rear yard at its lowest level that was not more than ten feet in depth and up to 40 percent of the yard could be occupied by a building 18 feet above curb level; and

WHEREAS, additionally, the Owner asserts that because the lot was back to back with another lot with a rear yard with insufficient depth, the depth of the rear yard was not required to be greater at any given level than the average depth of the rear yards directly back to back with it at such level; and

WHEREAS, the Owner asserts that the Union Club is directly behind the Building and is built to the lot line at its entire ground story which is as tall as the ceiling of the Building's second-story extension; and

WHEREAS, accordingly, the Owner asserts that there is not any merit to the contention that the extensions illegally encroached into a required rear yard; and

WHEREAS, the Owner rejects the Appellant's assertion that the Survey shows that the Building was illegally enlarged sometime after the enactment of the 1961 Zoning Resolution by the addition of a second story since the Appellant has no personal knowledge of these facts and rely solely upon a notation on an update of a survey of the Building from 1979; and

WHEREAS, the Owner asserts that there are certain conditions on the Survey known not to be accurate and that such discrepancies suggest that the various parties conducting the surveys may not have confirmed complete accuracy; and

WHEREAS, the Owner stated on record that the Survey itself is hearsay as the individuals who observed the site and made notations on the Survey are not present to speak to their contents, but acknowledges that the Board is not required to follow the Rules of Evidence and may consider such evidence; and

WHEREAS, the Owner asserts that there was physical evidence, documented in photographs, that the extension had existed in its current configuration prior to 1961 including the remainder of the fire escape system running from the roof of the second story; and

## THE QUESTION OF STANDING

WHEREAS, the Owner asserts that the Appellant lacks standing to appear in opposition to the Owner's appeal or to pursue their own appeal since they cannot claim to have suffered any diminution in the value of their property as a result of the rebuilding; and

WHEREAS, the Owner cites to the Court of Appeals in Sun-Brite Car Wash, Inc. v. Board of Zoning and Appeals of the Town of North Hempstead, 69 N.Y.2d 406, 414 (1978) for the principle that "it is reasonable to assume that,

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when the use changes, a person with property located in the immediate vicinity of the subject property will be adversely affected in a way different from the community at large” and that an allegation of close proximity “may give rise to an inference of damage or injury;” and

WHEREAS, the Owner asserts that the Appellant cannot assert any such harm and that the status of neighbor does not in and of itself warrant standing, when there is not injury; and

WHEREAS, the Owner also asserts that the Appellant cannot attack the certificates of occupancy which are under the jurisdiction of DOB who possesses the sole authority to issue and seek revocation of certificates of occupancy; and

WHEREAS, the Owner asserts that members of the public, purchasers of property, and lenders may rely on the conditions of a building embodied in a certificate of occupancy as complying with law; and

WHEREAS, the Appellant contends that as the adjacent neighbor, it is aggrieved by non-complying and illegal construction at the site; and

WHEREAS, the Appellant cites to Sun-Brite Car Wash for the proposition that it is “affected in a way different from the community at large” due to its proximity to the construction which does not comply with zoning district regulations; and

## CONCLUSION

WHEREAS, the Board is not persuaded by the Appellant’s assertions that (1) the Building is not a single-family home; (2) the reconstruction of the basement beneath the residential use increases the degree of non-compliance contrary to ZR § 54-41; and (3) the Building was illegally enlarged; and

WHEREAS, as to the classification of the Building, the Board agrees with the Owner and DOB that the Building is a single-family residence notwithstanding its former occupancy by a community facility use as well as a residence; and

WHEREAS, the Board agrees with the Owner that single-family residence and one-family residence have the same meaning; and

WHEREAS, the Board disagrees with DOB and does not find that there is a meaningful distinction between a “single-family residence” as defined at ZR § 12-10 and a “one-family residence” (as referenced at ZR § 54-41); and

WHEREAS, however, the Board agrees with DOB that the Building may be a single-family residence and also restricted by the provisions of ZR § 54-41 that only allow for the reconstruction of the Building’s “residence” (and not the entire Building) after the demolition of more than 75 percent of the Building’s floor area; and

WHEREAS, accordingly, the Board finds that ZR § 54-41’s allowance for the reconstruction of a residence within a one-family residence is warranted by the text and the intent of the Zoning Resolution with regard to single-family/one-family residences; and

WHEREAS, as to the portion of the Building to be reconstructed, the Board agrees with DOB’s position that the reconstruction of the area below the residential space

may be reconstructed as it does not increase the degree of non-compliance since the non-complying rear yard encroachment on the first and second stories establishes the extent of non-compliance and the rear yard is obstructed by the legal residential space both by footprint and by height; and

WHEREAS, as to the legality of the enlargement in the rear yard, the Board agrees with DOB and the Owner that there is not sufficient evidence to establish the illegality of the encroachment in the rear yard; and

WHEREAS, specifically, the Board finds the Appellant’s reference to historic DOB records to be inconclusive at best and finds that the 1955 Sanborn map is so imprecise that any clear understanding of what existed at that time based on it is illusory; and

WHEREAS, the Board agrees that the 1996 Certificate of Occupancy must be relied on until disturbed by DOB and that DOB appropriately asserts that it does not have any basis to question or seek to overturn it; and

WHEREAS, as to the Survey, the Board finds that it too is unclear and that it cannot form the basis to overturn the Certificate of Occupancy particularly in light of the fact that its drafters are not available to decipher the 60 years’ worth of notations and speak to what was actually observed at the site; and

WHEREAS, the Board accepts the Survey as an appropriate form of evidence but does not find that it alone can support the Appellant’s assertions as to illegality; and

WHEREAS, as to standing, the Board disagrees with the Owner and finds that the Appellant satisfies the requirements of an aggrieved party and does have standing to prosecute the appeal; however, the Board agrees with the Owner that the Appellant does not have standing to seek the revocation of the Certificate of Occupancy; and

WHEREAS, accordingly, the Board is not persuaded by the Appellant’s assertions that no portion of the enlargement in the rear yard can be reconstructed; and

*Therefore it is resolved* that, based upon the conclusions stated above, the Board denies the appeal seeking a reversal of the Final Determination of the Department of Buildings, dated January 6, 2012.

Adopted by the Board of Standards and Appeals, May 15, 2012.

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## **27-12-A**

APPLICANT – Greenberg Traurig, LLP, for F.B. Capital, LLC, owner.

SUBJECT – Application February 6, 2012 – Appeal challenging a determination by the Department of Buildings that more than 75 percent of the floor area was demolished and the building was not a single-family home so that reconstruction of the non-complying building was not permitted pursuant to ZR §54-41. R8B (LH-1A) Zoning District.

PREMISES AFFECTED – 110 East 70<sup>th</sup> Street, north side of East 70<sup>th</sup> Street, 125’ east of Park Avenue and 260’ west of Lexington Avenue, Block 1404, Lot 67, Borough of

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Manhattan.

## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Deirdre Carson.

### ACTION OF THE BOARD – Appeal Denied.

### THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

### THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated January 6, 2012 (the “Final Determination”), to uphold its Intent to Revoke Approval and Permit Letter associated with Permit No. 110169406 (the “Permit”), for the construction of a building at the subject site (the “Building”); and

WHEREAS, the Final Determination reads, in pertinent part:

The Department has reviewed the information you provided and, as further described below, has determined that you have not sufficiently demonstrated that Objection 1, 2, and 4 should be removed.

The Department has determined that Objection Nos. 1, 2, and 4 should not be removed because the plans filed with the Job Application are not in compliance with Section 54-41 of the Zoning Resolution (the “ZR”). Certificate of Occupancy No. 110596 states that the building contained a Use Group 2 one-family residence and a Use Group 4 community facility medical office. The building was non-complying because the medical office and a portion of the residence were located in the required rear yard of the Premises and exceeded lot coverage limitation. The building contained a one family “residence” and therefore, only the residential portion of the building may be reconstructed per Section 54-41 of the ZR, given that more than 75% of the building was demolished.

Per Section 54-41 of the ZR, a one family “residence” may be reconstructed provided that the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance with the applicable bulk regulations. Per Section 12-10 of the ZR, a “residence” is one or more dwelling units including common spaces. Therefore, the portion

of the building containing the Use Group 2 “residence” may be reconstructed but the portion of the building containing the Use Group 4 medical office cannot be reconstructed pursuant to Section 54-41 of the ZR. However, such space may be constructed to the extent permitted by the underlying district regulations and used for any use permitted in the zoning district.

Although the objections cannot be removed, in compliance with a Temporary Restraining Order entered on December 22, 2011 by the Honorable Eileen A. Rakower in *FB Capital, Inc. v. NYC Department of Buildings and Robert L. LiMandri*, Index No. 1114312/11, the Department is not, at this time, revoking the Permit; and

WHEREAS a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, and then to decision on May 15, 2012; and

WHEREAS, this appeal is brought on behalf of the owners of the subject property (the “Appellant”); and

WHEREAS, a separate appeal application was filed by the owners of 112 East 70<sup>th</sup> Street (the “Adjacent Neighbor”) and was heard concurrently and decided on the same day, pursuant to BSA Cal. No. 25-12-A; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commission Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of East 70<sup>th</sup> Street, between Park Avenue and Lexington Avenue, within an R8B zoning district within Limited Height District 1A; and

WHEREAS, the subject site has a width of 19’-10”, a depth of 100’-5”, and a total lot area of approximately 1,991.6 sq. ft.; and

WHEREAS, the site is occupied by a five-story (including penthouse) building with a basement, a cellar, and a sub-cellar; and

WHEREAS, the Building has the following parameters: a total floor area of 7,536 sq. ft. (3.78 FAR), with 6,406 sq. ft. of residential floor area and 1,130 sq. ft. of community facility (doctor’s office) floor area, a lot coverage of 84 percent, and a total height of 60’-0”; and

WHEREAS, a three-story portion of the Building (portions of the basement, first floor, and second floor) encroaches into the required 30’-0” rear yard to varying degrees; an L-shaped portion of the basement designated for doctor’s office use encroaches a total of approximately 395.6 sq. ft. into the rear yard, including a 110 sq. ft. one-story portion at the northeast corner of the basement; an approximately 9’-2” by 30’-0” portion of the first floor encroaches into the rear yard; and an approximately 9’-2” by 21’-7” portion of the second floor encroaches into the rear yard; and

WHEREAS, the Building was issued Certificate of Occupancy No. 110596 on December 3, 1996, which states:

Cellar – Boiler Room, Storage

Basement – Comm. – Doctor’s Office, Res. – Entry

1 (Footnote from the original) In your December 19, 2011 letter you also indicate that Objection No. 3 has been resolved with a filing of a Post Approval Amendment (“PAA”). As of the date of this letter, this Objection has not been resolved because the Department has not reviewed the PAA and an appointment has not yet been made with the Department to address the Objection.

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Hall to Dwelling Above

1<sup>st</sup> Floor – Res. – ¼ Dwelling Unit

2<sup>nd</sup> Floor – Res. – ¼ Dwelling Unit

3<sup>rd</sup> Floor – Res. – ¼ Dwelling Unit

4<sup>th</sup> Floor – Res. – ¼ Dwelling Unit

One (1) Family Dwelling; and

WHEREAS, at the time of the issuance of the Certificate of Occupancy, the doctor's office and a portion of the residential use were located within the 30-ft. rear yard; at that time, a doctor's office was a permitted encroachment into the required rear yard, but zoning text changes have rendered the encroachment non-complying; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the Adjacent Neighbor provided testimony in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, in May 2008, the Appellant filed an Alteration Type 1 application (No. 110169406) to renovate the Building and to change the doctor's office use on the basement floor to residential use; and

WHEREAS, on April 20, 2009, DOB approved the Alteration Type 1 application and on May 8, 2009 issued the Permit; and

WHEREAS, subsequently, the Appellant filed and DOB approved post approval amendments and other construction requirements; and

WHEREAS, during the following months and years, DOB received several complaints from the Adjacent Neighbor stating that the project did not comply with zoning regulations, which led DOB to audit the plans and at various times revoke the permits, issue stop work orders, and rescind same; and

WHEREAS, on December 6, 2011, DOB issued a notice of intent to revoke with a final version of audit objections, which state that (1) only the residential portion of the building may be reconstructed given that 75 percent of the building was demolished (ZR § 54-41), (2) construction of a community facility in the rear yard is not a permitted obstruction, (3) demonstrate that a change of use from doctor's office to residential use complies with ZR regulations for change of use and bulk (ZR § 24-33), and (4) the proposed lot coverage exceeds 70 percent, contrary to ZR § 24-11; and

WHEREAS, the Appellant demolished the majority of the Building and reconstructed it with the same non-complying conditions that existed prior to the demolition, which include the one- and three-story encroachments into the required 30-ft. rear yard and lot coverage in excess of what is permitted by zoning district regulations; and

WHEREAS, the Appellant seeks to maintain the entire Building with all non-complying conditions, which it asserts are legally non-complying and were reconstructed pursuant to the provisions set forth at ZR § 54-41; and

WHEREAS, the Appellant states that it would have preferred residential use on the basement level but that DOB only identified the issue of the increase in the degree of non-

compliance of the Building's court after the extension was demolished, and required the return to a doctor's office use so that the Appellant could retain the envelope of the building already approved and permitted; and

WHEREAS, after DOB issued audit objections which form the basis of the Final Determination, the Appellant brought a proceeding in New York State Supreme Court entitled Matter of FB Capital v. New York City Department of Buildings, Index No. 114312/11 to prevent DOB from revoking the building permits for the portion of the application related to the residence and requiring it to continue inspections and issue a Temporary Certificate of Occupancy; and

WHEREAS, the court issued a temporary restraining order preventing DOB from revoking the permits pending decision on the merits of the petition; and

WHEREAS, the Appellant asserts that the Building has been constructed as follows: the 395.6 sq. ft. of basement level includes approximately 285.6 sq. ft. beneath the residential portion of the Building constructed in 1922 and 110 sq. ft. in a separate one-story portion constructed in 1996 (when zoning allowed for doctor's office use to encroach into the rear yard and such encroachment would have been complying); and

## RELEVANT ZONING RESOLUTION PROVISIONS

### ZR Section 11-338

Building permits issued before February 2, 2011  
If a building permit has been lawfully issued on or before February 2, 2011, authorizing "other construction" as set forth in paragraph (c)(3) of Section 11-31 (General Provisions), construction pursuant to such permit may continue pursuant to the regulations governing such construction prior to the adoption of N110090(A) ZRY (Key Terms Clarification zoning text amendment) until February 2, 2012.

However, this Section shall not apply to "other construction" subject to Sections 23-692 (Height limitations for narrow buildings or enlargements) or 109-124 (Height and setback regulations).

\* \* \*

### ZR Section 12-10

*Residence, or residential* (italicized text adopted on 9/9/04, subsequently amended as reflected in the non-italicized text below)

A "residence" is a #building# or part of a #building# containing #dwelling units# or #rooming units#, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

(a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;

(b) #non-profit hospital staff dwellings#; or

(c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living



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or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

- (d) in a #mixed building#, that part of the #building# used for any non-#residential uses#, except #accessory# to #residential uses#.

"Residential" means pertaining to a #residence#.

\* \* \*

Residence, or residential (as amended on 2/2/11) A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

"Residential" means pertaining to a #residence#.

\* \* \*

Single-family residence (2/2/11)

A "single-family residence" is a #building# containing only one #dwelling unit#, and occupied by only one #family#.

\* \* \*

ZR Section 54-41

Permitted Reconstruction

If a #non-complying building or other structure# is damaged or destroyed by any means, including any demolition as set forth in this Section, to the extent of 75 percent or more of its total #floor area#, such #building# may be reconstructed only in accordance with the applicable district #bulk# regulations, except in the case of a one- or #two-family residence#, such #residence# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations. If the extent of such damage or destruction is less than 75 percent, a #non-complying building# may be reconstructed provided that such reconstruction shall not create a new #non-compliance# nor increase the pre-existing degree of #non-compliance# with the applicable #bulk# regulations; and

## THE ISSUES ON APPEAL

WHEREAS, the Appellant seeks for the Board to

review the DOB interpretations which form the basis for its Final Determination and have led to the revocation of the Permit and DOB's refusal to issue a certificate of occupancy for the Building; and

WHEREAS, the Appellant's primary challenges are to DOB's conclusion that (1) the Building cannot be reconstructed in its entirety and only the portion of the Building formerly occupied by residential use or beneath residential use can be reconstructed within the meaning of ZR § 54-41 because the Building included a non-residential use, (2) the definition of residence limits the portions of the Building that can be reconstructed, and (3) more than 75 percent of the Building's floor area was demolished as contemplated by ZR § 54-41 and, thus, the Building in its entirety cannot be reconstructed; and

### I. THE CLASSIFICATION OF THE BUILDING

WHEREAS, the Appellant's position is that the entire Building is a one-family residence and may be demolished to the extent of 75 percent or more of its total floor area and reconstructed under the provisions of ZR § 54-41; and

WHEREAS, the Appellant asserts that ZR § 54-41 allows for one- and two-family homes to be entirely demolished and rebuilt; and

WHEREAS, the Appellant asserts that the Building in its entirety is a one-family residence within the meaning of ZR § 54-41 and, thus, both the portions that are identified as residential on the 1996 Certificate of Occupancy and the portions identified as community facility on the 1996 Certificate of Occupancy can be rebuilt in full; and

WHEREAS, the Appellant asserts that a one-family residence (the term used at ZR § 54-41) and a single-family residence (a term defined at ZR § 12-10) have the same meaning and include the entire Building; and

WHEREAS, the Appellant asserts that multiple City agencies have characterized the Building as a one-family residence; it was built as and occupied as a one- or two-family residence until 1963; and the relevant ZR definitions in effect at the time of the 2009 application approval support the conclusion that the entire Building is a one-family residence, with a doctor's office; and

WHEREAS, the Appellant asserts that the doctor's office in the basement represents less than 15 percent of the floor area in the Building and the portion of the doctor's office in the rear yard represents 395.6 sq. ft. of floor area; and

WHEREAS, the Appellant relies on the 1996 Certificate of Occupancy and the text of the ZR, both as it existed at the time of the Permit issuance and since the Key Terms Clarification Text Amendments were adopted on February 2, 2011; and

WHEREAS, as to the 1996 Certificate of Occupancy, the Appellant states that it notes that the Building is a "ONE (1) FAMILY DWELLING;" and

WHEREAS, the Appellant asserts that the Certificate of Occupancy characterization is binding on DOB pursuant to New York City Charter § 645(b)(3)(e) and that buildings in the vicinity of the site with a similar mix of uses are identified as one- or two-family dwellings; and

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WHEREAS, the Appellant states that the ZR does not define the term “one-family residence” used in ZR § 54-41; and

WHEREAS, instead, the Appellant refers to the Zoning Resolution definition of “residence, single-family” in effect at the time of the Permit’s issuance as “a ‘building’ containing only one ‘dwelling unit,’ and occupied by only one ‘family;’” and

WHEREAS, the Appellant asserts that the word “only” modifies the adjective “one” rather than the verbs “containing” and “occupied” such that a single-family residence may contain uses other than a dwelling unit occupied by one family as only the number of dwelling units and families is limited by the word “only;” and

WHEREAS, the Appellant asserts that there is ambiguity associated with the term “one-family residence” and that the ambiguity must be resolved in favor of the property owner; and

WHEREAS, the Appellant asserts that there is a clear legislative intention of favoring homeowners evident in ZR § 54-41 as well as the principle that the ZR be construed in favor of the property owner. See, e.g. Matter of Toys “R” Us v. Silva, 89 N.Y.2d 411, 421 (1996); and Matter of Allen v. Adami, 39 N.Y.2d 275, 277 (1976); and

WHEREAS, accordingly, the Appellant asserts that it proposes to occupy the Building as a one-family residence within the meaning of ZR § 54-41, the Building was appropriately reconstructed after demolition, and the Board should thus grant the appeal and vacate the Final Determination; and

WHEREAS, DOB’s position is that although the Building meets the ZR § 12-10 definition of “single-family residence” (unchanged by the Key Terms Text Amendments), it does not meet the definition of one-family residence within the context of ZR § 54-41 to the extent that the whole Building is not permitted to be reconstructed, but only the portion containing the “residence;” and

WHEREAS, DOB asserts that based on the language of ZR § 54-41, and the definitions of “residence” and “dwelling unit,” only the portion of the building containing the “residence” that is the “dwelling unit” including common spaces may be reconstructed; and

WHEREAS, DOB asserts that the one-story non-complying portion of the Building formerly occupied by the doctor’s office and located in the required rear yard may not be reconstructed because ZR § 54-41 only permits reconstruction of the residential portion of the one-family residence and because it is a community facility, not a “dwelling unit,” and therefore, not a “residence”; and

WHEREAS, DOB notes that the one-story portion of the Building formerly occupied by the doctor’s office and within the required rear yard is non-compliant because pursuant to ZR § 24-33, the doctor’s office is not a permitted obstruction in the required rear yard and the portion of the Building occupied by residential use within the required rear yard became non-compliant because a “residence” is not a permitted obstruction pursuant to ZR § 23-44; and

WHEREAS, DOB states that the space formerly

occupied by the doctor’s office below the “residence” may be reconstructed since the construction in that space would not increase the existing degree of non-compliance; and

WHEREAS, DOB asserts that the residential exception in ZR § 54-41 does not apply to the building containing “such ‘residence’” but rather to the “residence” (dwelling units) within the building; and

WHEREAS, DOB asserts that if the intent were for the whole building to be covered by the exception, the text would state that such *building* may be reconstructed rather than that such *residence* may be reconstructed; and

WHEREAS, DOB states that to allow for reconstruction of an entire non-complying building just because it contained one dwelling unit is contrary to the intent and could lead to absurd results; and

WHEREAS, DOB asserts that it has always applied the ZR § 12-10 definition of residence to refer only to the residential use within a building and not to include residential use and other uses such as community facility uses, commercial uses, or manufacturing uses; and

WHEREAS, DOB states that the words “or part of a ‘building’” in the pre-Key Terms definition of residence are used to describe a building with multiple uses and used to identify that only those “part(s) of a building” with dwelling units should be considered a “residence”; and

WHEREAS, DOB asserts that there would not be any purpose to include the term “part of a ‘building’” in the definition of “residence” if, as the Appellant argues, the term “residence” were to refer to the entire building no matter which additional uses were located in the building; and

WHEREAS, DOB concludes that the Appellant must amend its plans to remove the basement level portion of the community facility in the required rear yard that consists of the one-story doctor’s office which is not located beneath the non-complying residential portion of the Building (approximately 110 sq. ft.) and the plans must be amended to either replace the community facility portion of the Building beneath the non-complying residential space with residential use or reconstruct that portion of the building to the extent permitted by district bulk regulations; and

WHEREAS, DOB states that to the extent the residential space at the first and second floors may be reconstructed as non-complying residential space in the rear yard, residential space may also be located beneath such non-complying space without creating a new non-compliance or increasing the degree of non-compliance; and

WHEREAS, DOB states that if the Appellant removes the one-story portion of the Building and amends its plans to indicate that the portion of the Building in the required rear yard at basement level beneath the non-complying residential space would be constructed as residential space, it could approve the plans and lift the zoning objections; and

WHEREAS, the Adjacent Neighbor’s position is that the reconstruction provisions of ZR § 54-41 do not apply since the Building is a mixed residence and community facility building, rather than a single-family residence, and it was demolished in excess of 75 percent; and

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WHEREAS, the Adjacent Neighbor contends that because the Building was occupied by two uses – residential and community facility – it is not a single-family residence and cannot benefit from the more permissive reconstruction provisions of ZR § 54-41 applicable to single-family residences and, thus, can only be constructed in full compliance with current zoning regulations; and

WHEREAS, the Adjacent Neighbor asserts that the Building does not meet a clear and unambiguous definition of “single-family residence” because it includes a community facility; and

WHEREAS, accordingly, the Adjacent Neighbor asserts that the Building can only be reconstructed in accordance with the bulk regulations for a new building in the underlying R8B zoning district; and

WHEREAS, the Adjacent Neighbor asserts that ZR § 12-10 defines “single-family residence” as a building that contains *only* one dwelling unit (to the exclusion of other uses) and *only* one family (to the exclusion of other occupants) and that the “only” modifies “containing” and “occupied”; and

WHEREAS, the Adjacent Neighbor states that the Appellant’s interpretation of “single-family residence” to include buildings with multiple uses would lead to absurd results such as the identification of a largely commercial building with a single dwelling unit as constituting a “single-family residence” eligible for the favorable reconstruction exception set forth at ZR § 54-41; and

WHEREAS, the Adjacent Neighbor’s position is that allowing the reconstruction of the non-complying portion of the Building formerly occupied by the doctor’s office to be occupied by any use will increase the degree of non-compliance in the rear yard, contrary to ZR §§ 54-41 and 23-44; and

WHEREAS, the Adjacent Neighbor asserts that allowing for reconstruction of the basement would allow for an obstruction at the basement level in addition to the obstructions on the residential second and third floors, which reflects an increased degree of non-compliance over just rebuilding the second and third floors and leaving the basement level open; and

## II. DEFINITION OF RESIDENCE

WHEREAS, the Appellant cites to the ZR § 54-41 text that states “except in the case of a one- or ‘two-family residence’ such ‘residence’ may be reconstructed” and asserts that the “such ‘residence’” refers back to the whole one- (or two-) family residence which may, accordingly, be reconstructed in its entirety; and

WHEREAS, the Appellant asserts that not only does “such ‘residence’” mean the entire building but that “residence,” as defined at ZR § 12-10 also is interpreted to include the entire building; and

WHEREAS, the Appellant asserts that the definition in effect at the time the Permit was issued supports its more inclusive reading of “residence;” and

WHEREAS, the Appellant notes that on February 2, 2011, the ZR was amended through the Key Terms Clarification Text Amendment and the definition of

residence at ZR § 12-10 was amended to state that a residence is “one or more dwelling units”; and

WHEREAS, the Appellant asserts that DOB acted inappropriately by applying the February 2, 2011 definition of residence to its interpretation of “such ‘residence’” in ZR § 54-41; and

WHEREAS, the Appellant asserts that the meaning of the old definition and the new definition are different as the new definition isolates the dwelling unit component of the building from the rest of the building where the prior definition does not; and

WHEREAS, the Appellant cites to ZR § 11-338 which states that if a building permit was issued on or before February 2, 2011 authorizing “other construction,” the construction may continue under the old regulations until February 2, 2012 and, thus DOB should not use a provision of law not yet applicable to characterize the alteration of the Building as illegal; and

WHEREAS, the Appellant maintains that ZR § 11-338 grandfathers construction that was permitted under the pre-amendment regulations and disagrees with DOB’s assertion that because the definition of “residence” is identified as a “modification” on City Planning’s table associated with the amendments, rather than a “clarification,” the Appellant may not rely on the pre-existing ZR text where it was inconsistent with DOB “interpretation and practice;” and

WHEREAS, the Appellant asserts that the pre-amendment text is relevant because: (1) DOB approved the plans which were clear on their face and there is no evidence of DOB interpretation or practice that is inconsistent with the prior text; (2) ZR § 11-338 does not distinguish among the amendments and does not say that applicants may only rely on the regulations that are clarifications and not modifications; and (3) DOB’s assertion that the change was a modification, rather than a clarification suggests that there was formerly a different meaning; and

WHEREAS, the Appellant also asserts that the need to modify or clarify the definition of “residence,” suggests that there was a recognition that the definition was unclear and ambiguous; and

WHEREAS, the Appellant represents that it filed for a certificate of occupancy on December 20, 2011 and that DOB rejected its application, in part based on the current definitions, on January 6, 2012; and

WHEREAS, the Appellant asserts that the definition of “single-family residence” remains unchanged but that “residential building” has been changed to include that a “residential building is a building used only for a residential use;” and

WHEREAS, the Appellant asserts that if it had been intended that the definition of “single-family residence” be limited to buildings containing only residential uses, then the Key Terms Text would have included an amendment of the single family residence definition to state that a single family residence is a “residential building” only containing one dwelling unit and only occupied by one family; and

WHEREAS, DOB cites to the definitions of “residence” and “dwelling unit” in effect as of February 2,

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2011; and

WHEREAS, DOB asserts that it properly invokes the Key Terms Text Amendment definitions since the purpose of the amendment was to clarify the intent of the ZR in relation to the terms “development” and “building” and its purpose includes that “the definition of ‘residence, or residential,’ will be modified to specify that it is one or more dwelling units, and includes ‘common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas.’ Paragraph (d) will be deleted as redundant;” and

WHEREAS, accordingly, DOB asserts that the amendment was not a substantive change to the definition but rather a clarification and modification to make the wording of the definition of “residence,” among others, consistent with DOB’s interpretation and practice; and

WHEREAS, however, DOB asserts that the use of the Key Terms definition of “residence” is proper because it does not reflect a substantive change to the meaning that DOB has always used for “residence;” and

WHEREAS, DOB asserts that the Key Terms definition clarifies how DOB has always interpreted the definition of “residence” to mean dwelling units and common spaces; and

WHEREAS, in the alternate, DOB asserts that the pre-amendment definition of “residence” does not support the Appellant’s claim that the entire Building should be classified as a one-family “residence;” and

WHEREAS, by letter dated April 26, 2012, the Department of City Planning (DCP) states that it supports DOB’s response to the Appellant and agrees with DOB’s interpretation of the meaning of ZR § 54-41’s reference to “residence;” and

WHEREAS, specifically, DCP states that “such ‘residence’” as used in ZR § 54-41 refers to the residential portion of a building that contains one or more dwelling units; and

WHEREAS, DCP states that prior to the Key Terms Text Amendment, the definition of “residence” referred to dwelling units or rooming units and following the amendment, the definition of “residence” was modified to include common spaces such as hallways and lobbies; and

WHEREAS, DCP asserts that the purpose of the change was to clarify that the common areas of a residential building are considered residential and that the change was not substantive as it was consistent with DOB’s prior interpretations and practices; and

WHEREAS, DCP states that its reading is consistent with the intent of ZR § 54-41 to grant individual home owners a special exception to the general prohibition upon reconstruction of non-complying buildings which have been damaged or destroyed in excess of 75 percent of the floor area; and

WHEREAS, DCP asserts that a public policy goal is served by allowing owners of one- and two-family homes to reconstruct their dwelling space and that such public policy does not logically extend to the reconstruction of non-complying non-residential space; and

WHEREAS, accordingly, DCP concludes that ZR § 54-41 only allows for the reconstruction of non-complying portions of one- and two-family residences occupied by dwelling units and not non-residential uses; and

WHEREAS, the Appellant disagrees with DOB and DCP that the reference to “such ‘residence’” in ZR § 54-41 refers only to the dwelling units in the one- or two-family residence since “residence” is a defined term and not synonymous with “dwelling unit;” and

WHEREAS, the Appellant asserts that the definition of residence is intended to reference entire buildings rather than just the dwelling unit components as evidenced by the inclusion of the language “including one-family and two-family houses, multiple dwellings, boarding or rooming houses, or apartment hotels,” all of which are “buildings” that may contain not only residences but other uses; and

WHEREAS, the Appellant disagrees with DOB and DCP and asserts that the new definition of residence reflects a material change from the old definition because the original definition requires the consideration of a building and the new definition does not address buildings, but rather dwelling units; and

WHEREAS, the Appellant compares the beginning of the original definition:

A “residence” is a *building* or a part of a *building* containing *dwelling units* or *rooming units*, including one-family or two-family houses, multiple dwellings, boarding or rooming houses or *apartment hotels*

With the beginning of the new definition:

A “residence” is one or more *dwelling units* or *rooming units*, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation or storage areas; and

WHEREAS, the Appellant asserts that the purpose of the amendment was to remove the reference to “buildings” in the definition of “residence” and to redirect the focus to dwelling units and that reflects a material change of language and meaning; and

WHEREAS, the Appellant asserts that the fact that DOB did not raise the issue with the Appellant earlier including through the plan audit process, reflects its position that the text is not clear or self-evident and DOB has not had a consistent approach to the question of what constitutes a residence for the purposes of the exception set forth at ZR § 54-41; and

WHEREAS, the Appellant concludes that since zoning regulations are in derogation of common law property rights, they must be interpreted in the light most favorable to the property owner particularly since the fact that the modification to the text confirms that the text was ambiguous and subject to misapplication in its pre-2011 form; and

### III. THE EXTENT OF DEMOLITION

WHEREAS, the Appellant’s position is that the Building was not demolished to an extent of 75 percent or more at any one time and, thus, can be reconstructed in its entirety pursuant to ZR § 54-41; and

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WHEREAS, as to the extent of demolition, the Appellant asserts that at no time during demolition was more than 75 percent of the Building's floor area removed and that all floor area that was removed was replaced in its original location; and

WHEREAS, the Appellant asserts that the language of ZR § 54-41 is vague and imprecise as to what constitutes "damage or destruction" and over what period of time the owner's right to rebuild will be divested; and

WHEREAS, the Appellant asserts that all of its construction was performed within the historic building envelope and involved replacement of historic building materials with modern equivalents and that at no time was the aggregate floor area demolished to more than 72.5 percent of the Building's total floor area; and

WHEREAS, the Appellant asserts that the absence of direction on the timing parameters of demolition allows for a demolition sequencing like what was performed; and

WHEREAS, the Appellant asserts that an interpretation of ZR § 54-41 which does not allow for phased demolition leads to a harsh result; and

WHEREAS, the Appellant asserts that DOB has interpreted ZR § 54-41 to allow for phased demolition and has provided examples to support the assertion that DOB has allowed greater than 75 percent demolition at other sites; and

WHEREAS, the Appellant asserts that it relied on DOB's examination and approval of the plans that detailed the scope of the demolition and its sequence and asserts that DOB concluded that the proposal was consistent with ZR § 54-41; and

WHEREAS, the Appellant asserts that ZR § 54-41 is vague as to whether demolition is cumulative over time or has some other meaning and that such vagueness is potentially unconstitutional; and

WHEREAS, accordingly, the Appellant asserts that, because less than 75 percent of the Building was demolished at any one time, the whole non-complying Building may be reconstructed; and

WHEREAS, DOB's position is that the Building was demolished to an extent of 75 percent or more; and

WHEREAS, DOB asserts that the limitation set forth in ZR § 54-41 that demolition can not exceed 75 percent or more of the floor area of a non-complying building would be rendered meaningless if property owners could avoid it simply by phasing development as the Appellant suggests; and

WHEREAS, DOB states that the plans filed with the job application indicate that approximately 90 percent of the total floor area of the Building would be demolished and, thus, the Appellant's assertion that the requirements of ZR § 54-41 are not applicable because only 72.5 percent of the Building's total floor area was demolished at any one moment is without merit since the plans filed indicate almost a complete demolition of the total floor area of the non-complying Building; and

WHEREAS, DOB rejects the Appellant's assertion that the type of damage or destruction contemplated by ZR §

54-41 is not tied to the reconstruction in-kind of the Building but rather to the rearrangement of floor area in an altered building; DOB relies on the plain meaning of ZR § 54-41 which specifically includes demolition work as a type of "destruction" and specifically uses the ZR term "floor area" to measure what must be demolished to trigger the limits; and

WHEREAS, DOB asserts that the ZR does not make any distinction between demolition and replacement in-kind and demolition that involves the rearrangement of floor area; and

WHEREAS, the Adjacent Neighbor asserts that more than 75 percent of floor area was demolished pursuant to a single DOB job application and therefore the Building may be reconstructed only in accordance with the current bulk regulations, regardless of whether demolition was phased; and

WHEREAS, the Adjacent Neighbor asserts that the Appellant demolished 92 percent of the Building's floor area pursuant to a single DOB job application and therefore "may be reconstructed only in accordance with the applicable district bulk regulations" pursuant to ZR § 54-41; and  
THE BOARD'S ANALYSES

WHEREAS, the Board has carefully considered all arguments provided into the record; and

WHEREAS, as to the first issue regarding the classification of the Building, the Board agrees with the Appellant's and DOB's position that the Building is a single-family residence which is a building in its entirety that contains only one dwelling unit or is occupied by only one family but may contain or be occupied by other uses; and

WHEREAS, the Board agrees with the Appellant's position that the reference to a one-family residence in ZR § 54-41, has no material difference from a single-family residence and that while a one-family residence is not a defined term, it is interchangeable with the definition of a single-family residence; and

WHEREAS, the Board notes that throughout the ZR, there are several references to "one- or two-family residences" and/or "single- or two-family residences"; further that two-family residence (unlike one-family residence) is a defined term that parallels the definition of single-family residence; and

WHEREAS, the Board further notes that there is no rational basis to distinguish between single-family residence and a one-family residence under ZR § 54-41, particularly since the provisions also apply to a two-family residence; and

WHEREAS, the Board concludes that the Building in its entirety is both a single-family residence and one-family residence under the meaning of ZR § 54-41; and

WHEREAS, as to the second issue regarding the definition of residence, as a threshold matter, the Board is not persuaded by DCP and DOB's assertion that the applicable definition of "residence" is the current post-Key Terms Text Amendment definition; and

WHEREAS, the Board agrees with the Appellant that

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ZR § 11-338 does not make a distinction between clarifications and modifications and simply sets forth that if the permit was issued prior to February 2, 2011 and construction was completed prior to February 2, 2012, the permit may continue pursuant to the prior regulations; and

WHEREAS, accordingly, the Board finds that since the Permit was issued prior to February 3, 2011 and construction was completed prior to February 2, 2012, it is appropriate to apply the pre-Key Terms Text Amendment definition of “residence;” and

WHEREAS, however, the Board agrees with DOB that neither the 2004 nor 2011 definition of “residence” supports the Appellant’s conclusion that ZR § 54-41 allows for the entire Building, rather than just the residence, to be reconstructed; and

WHEREAS, as to the ZR § 12-10 definition of “residence,” the Board recognizes the Department of City Planning (DCP) as the drafters of and authority on the Zoning Resolution and agrees with DCP and DOB that the text is appropriately read to give distinct meanings to “a building” or “part of a building” and that statutory interpretation principles require that there be meaning to all words in the statute; and

WHEREAS, the Board finds that if it were to accept the Appellant’s assertion that a building only partially occupied by a residential use is a residence then there is no meaning for “or part of a building containing dwelling units” within the definition; and

WHEREAS, the Board concludes that the portion of the definition that more closely fits the Building is “part of a building containing dwelling units” rather than that it is a building (which partially contains dwelling units and partially contains community facility use); and

WHEREAS, the Board notes that within the definition of residence, there are two other references to portions/parts of the building: at paragraphs (c) and (d) and those both have meaning as well; for example at paragraph (c) a distinction is made between community facility buildings and portions of buildings used for community facility uses such that a building with only a portion of it occupied by community facility uses is not a community facility building or there would be no reason to identify the two kinds of buildings (community facility buildings and buildings with portions that contain community facility use); and

WHEREAS, similarly, the Board notes that in paragraph (d), mixed buildings are divided into sections that include the part used for residential purposes and the part used for non-residential purposes; and

WHEREAS, the Board notes that the definition has three references to portions/parts of buildings, so it seems clear that there is meaning to the distinct uses that occupy portions of a building and that the building and the portion of the building used for a particular use are not interchangeable; and

WHEREAS, because the Board finds that only the portion of the Building occupied by residential use is a “residence” for the purposes of applying ZR § 54-41, only those portions of the Building may be reconstructed once

more than 75 percent of the Building has been demolished; and

WHEREAS, as to the third issue regarding whether 75 percent or more was demolished: the Board agrees with DOB that ZR § 54-41 does not contemplate phased construction as the Appellant suggests and that because more than 75 percent of the Building was demolished, only the residence can be reconstructed; and

WHEREAS, the Board is not persuaded that the Appellant’s two examples of DOB construction approvals reflect a practice of interpreting ZR § 54-41 to allow phased construction; and

WHEREAS, the Board agrees with DOB that the 75 percent limit would not have any meaning if property owners, particularly within a single job application and pursuant to a single permit, were able to avoid the restriction simply by phasing construction; and

WHEREAS, further, the Board notes that it is difficult to communicate such phased development on building plans or to enforce it out in the field; and

## CONCLUSION

WHEREAS, the Board notes that, in the end, the only element of the Building upon which the Appellant and DOB disagree is whether the 110 sq. ft. one-story encroachment in the rear yard is permitted pursuant to the terms of ZR § 54-41 and can remain; and

WHEREAS, the Board notes that although there are several other matters that the Appellant and DOB dispute, those matters do not affect the outcome of the Building except with regards to the one-story encroachment; and

WHEREAS, the Board agrees with DOB that a modification of the Building to reflect (1) the removal of the 110 sq. ft. one-story encroachment in the rear yard formerly occupied by community facility use and (2) a residential use within the portion of the basement beneath the two-story encroachment in the rear yard reflects construction that is consistent with the restrictions of ZR § 54-41; and

WHEREAS, the Board agrees with DOB that the one-story portion of the Building formerly occupied only by the doctor’s office should not have been reconstructed since: (1) it is not a residence and (2) its construction increases the degree of non-compliance as to encroachment in the rear yard and lot coverage; and

WHEREAS, the Board concludes that the portion of the basement below the first- and second-story residential use can be reconstructed since it does not increase the degree of non-compliance because the first and second story establish a greater degree of non-compliance, given their height above grade, than the basement (which is within the footprint of the first story); and

WHEREAS, the Board accepts DOB’s position that the re-built basement portion of the Building can only be occupied by residential use since the residence is the only use to be reconstructed; and

WHEREAS, the Board is not persuaded by the Appellant’s assertions that (1) the text is ambiguous and (2) DOB’s interpretation is contrary to the intent of the Zoning Resolution; and

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WHEREAS, therefore, the Board finds that DOB properly objects to the current construction plans and agrees that the Appellant should modify the proposal to reflect (1) the removal of the one-story (approximately 110 sq. ft.) encroachment into the rear yard and (2) the inclusion of residential use within the entire three-story encroachment into the rear yard; and

*Therefore it is resolved* that, based upon the conclusions stated above, the Board denies the appeal seeking a reversal of the Final Determination of the Department of Buildings, dated January 6, 2012.

Adopted by the Board of Standards and Appeals, May 15, 2012.

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## 99-11-A

APPLICANT – Eric Palatnik, P.C., for Naila Aatif, owner.  
SUBJECT – Application July 8, 2011 – Legalization of changes to a two-family residence which does not front upon a legally mapped street, contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 16 Brighton 7<sup>th</sup> Walk, between Brighton 7<sup>th</sup> Street and Brighton 8<sup>th</sup> Street. Block 8667, Lot 774, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik and James Bullock.

For Administration: Lt. Simon Ressler and Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

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## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for deferred decision.

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## 154-11-A

APPLICANT – Eric Palatnik, for Atlantic Outdoor Advertising, Inc., owner.

SUBJECT – Application October 3, 2011 – Appeal seeking reversal of a Department of Buildings’ determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 zoning district.

PREMISES AFFECTED – 23-10 Queens Plaza South, between 23<sup>rd</sup> Street and 24<sup>th</sup> Street, Block 425, Lot 5, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik and Matt Perline.

For Administration: John Egnatios-Beene.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 5, 2012, at 10 A.M., for decision, hearing closed.

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## 196-11-A

APPLICANT – Bryan Cave, LLP, for Jamaica Estates Design Group LLC, owner.

SUBJECT – Application December 27, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.

PREMISES AFFECTED – 178-06 90<sup>th</sup> Avenue, southeast corner of the intersection of 90<sup>th</sup> Avenue and 178<sup>th</sup> Street, Block 9894, Lot 47, 48, 51, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Frank Chaney and Judith Gallent.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## REGULAR MEETING TUESDAY AFTERNOON, MAY 15, 2012 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.  
Absent: Commissioner Montanez.

### ZONING CALENDAR

#### 102-11-BZ

#### CEQR #12-BSA-003Q

APPLICANT – H. Irving Sigman, for S & I Property Management, LLC, owner.

SUBJECT – Application July 20, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*New York Spa*). M1-1 (CP) zoning district.

PREMISES AFFECTED – 131-23 31<sup>st</sup> Avenue, northwest corner of the intersection of 31<sup>st</sup> Avenue & Whitestone Expressway (West Service Road). Block 4361, Lot 27. Borough of Queens.

#### COMMUNITY BOARD #7Q

#### APPEARANCES –

For Applicant: Richard Lobel and Barney Sigman.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2011, acting on Department of Buildings Application No. 420287870, reads in pertinent part:

The proposed physical culture establishment, in the M1 zoning district, is not a permitted as-of-right use, as per Sec. 42-10 ZR, and is referred to the Board of Standards and Appeals for a special permit, pursuant to Sec. 73-36 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-1 zoning district within the Special College Point District, the operation of a physical culture establishment (“PCE”) in eight of the existing 12 two-story attached commercial buildings on the site, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 15, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens,

recommends disapproval of this application, citing concerns about (1) the vacancy of some of the buildings on the site, (2) the need for additional foundation work including extensive piling, and (3) the difficulty of obtaining a reasonable return on the site; and

WHEREAS, Queens Borough President Helen Marshall recommended disapproval of this application, citing concerns regarding: (1) the ability of the proposed number of parking spaces to accommodate the increased parking demand generated by the proposed PCE; and (2) the inadequacy of the attended parking plan; and

WHEREAS, New York State Senator Tony Avella provided written testimony in support of the application; and

WHEREAS, the subject site is located on the northwest corner of the Whitestone Expressway service road and 31<sup>st</sup> Avenue, in an M1-1 zoning district within the Special College Point District; and

WHEREAS, the site has approximately 265 feet of frontage on 31<sup>st</sup> Avenue, 200 feet of frontage on the Whitestone Expressway, and a lot area of 107,284 sq. ft.; and

WHEREAS, the site is occupied by 12 two-story attached commercial buildings (each with a current certificate of occupancy for Use Group 16 warehouse use on the first floor and Use Group 6 office use on the second floor) with a total floor area of approximately 75,560 sq. ft., and an accessory parking lot located to the rear of the existing buildings; and

WHEREAS, the applicant proposes to consolidate and alter the seven westernmost buildings and the second floor of the eighth westernmost building (the first floor of that building will remain as warehouse use) to accommodate the proposed PCE; and

WHEREAS, the applicant also proposes to make alterations to the existing buildings to convert them to the proposed PCE use, and to construct a new first story mezzanine for a lounge area, roof deck, and spa pool; and

WHEREAS, the applicant states that the proposed alterations and enlargements will increase the total floor area at the site from approximately 75,560 sq. ft. to 78,266 sq. ft.; and

WHEREAS, the PCE will be operated as New York Spa; and

WHEREAS, the proposed hours of operation are: 6:00 a.m. to 12:00 a.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement, as well as facilities for the practice of massage by New York State licensed masseurs and masseuses; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and



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WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the Special College Point District regulations do not restrict the use of the site for the proposed PCE; and

WHEREAS, in response to the concerns raised by the Borough President, and at the direction of the Board, the applicant filed a Zoning Resolution Determination Form (“ZRD1”) with the Department of Buildings (“DOB”) for review of the proposed attended parking scheme; and

WHEREAS, the applicant submitted the ZRD1 which reflects that DOB reviewed the attendant parking arrangement and approved the layout without conditions; and

WHEREAS, in response to the Borough President’s concern regarding a lack of parking spaces, the applicant states that the proposed PCE use and the existing warehouse and office uses on the site require a total of 148 parking spaces, and that in addition to the proposed 140 open accessory attended parking spaces located in the accessory parking lot at the rear of the site, the proposal provides for eight new enclosed parking spaces in the remaining warehouse buildings, and one parking space in the PCE; thus, there will be a total of 149 on-site parking spaces for the site; and

WHEREAS, the Board acknowledges the concerns raised by the Community Board, but notes that such considerations are not relevant to the required findings under ZR § 73-36; and

WHEREAS, at hearing, the Board questioned whether landscaping was required for the site; and

WHEREAS, in response, the applicant states that landscaping is not required pursuant to the Zoning Resolution, but that it will provide a 3’-0” wide landscaped buffer and a metal fence with a height of 6’-0” around the perimeter of the site; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA003Q, dated July 6, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure;

Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-1 zoning district within the Special College Point District, the operation of a physical culture establishment (“PCE”) in eight of the existing 12 two-story attached commercial buildings on the site, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 19, 2012” - Nine (9) sheets; and *on further condition*:

THAT the term of this grant will expire on May 15, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT fire safety measures must be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2012.

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## 176-11-BZ

### CEQR #12-BSA-040K

APPLICANT – Eric Palatnik, P.C., for Alla Lubimor, owner.

SUBJECT – Application November 14, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 25, 2011, acting on Department of Buildings Application No. 320398636, reads in pertinent part:

The proposed horizontal and vertical enlargement of the existing one-family residence in an R3-1 zoning district:

1. Creates a new non-compliance with respect to lot coverage and is contrary to Section 23-141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to floor area and is contrary to Section 23-141(b) ZR.
3. Creates a new non-compliance with respect to rear yard and is contrary to Section 23-47 ZR.
4. Increases the degree of non-compliance with respect to the side yard(s) and is contrary to Sections 23-461(a) ZR and 54-31(ZR); and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; and

WHEREAS, a public hearing was held on this application on February 14, 2012 after due notice by publication in *The City Record*, with continued hearings on March 20, 2012 and April 24, 2012, and then to decision on May 15, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, a representative of the Madison-Marine-Homecrest Civic Association testified in opposition to this application, citing concerns with the effect of the proposed enlargement on the character of the surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 3,074 sq. ft., and is occupied by a single-family home with a floor area of 783 sq. ft. (0.26 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 783 sq. ft. (0.26 FAR) to 3,003 sq. ft. (0.98 FAR); the maximum permitted floor area is 1,537 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 49 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 0'-11", and to maintain the existing side yard along the southern lot line with a width of 4'-10" (two side yards with a minimum width of 5'-0" and 8'-0", respectively, are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 24'-3" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a study of FARs in the area which reflects that there are numerous homes in the vicinity of the site with FARs that exceed 1.0; and

WHEREAS, the applicant also submitted a streetscape of the homes immediately surrounding the site; and

WHEREAS, at hearing, the Board directed the applicant to provide an extended streetscape and revise the analysis of the homes included in the streetscape to only reflect the legal conditions of the homes; and

WHEREAS, in response, the applicant provided a revised streetscape and analysis, which reflects that the street on which the site is located consists of detached single-family homes that range in height from one to three stories, and that the proposed enlargement (which complies with the underlying zoning district regulations related to height) is consistent with the character of the surrounding homes; and

WHEREAS, the applicant also submitted an analysis indicating that at least eight homes along Norfolk Street between Oriental Boulevard and Shore Boulevard have been granted special permits pursuant to ZR § 73-622 in the past ten years, and that the subject homes were all granted FARs ranging from 0.94 to 1.0; and

WHEREAS, the Board notes that the evidence submitted by the applicant included some erroneous information which

# MINUTES

the Board has not relied on; rather, the Board relies on its own review of its prior grants pursuant to ZR § 73-622 as well as the site visits conducted by the members of the Board; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, at hearing, the Board questioned how the cellar will be constructed without disturbing the existing exterior walls; and

WHEREAS, in response, the applicant submitted a letter and drawings from its engineering consultant detailing how the proposed cellar will be constructed while retaining the existing exterior walls; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 26, 2012"-(12) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,003 sq. ft. (0.98 FAR); lot coverage of 49 percent; a side yard with a minimum width 0'-11" along the northern lot line; a side yard with a minimum width of 4'-10" along the southern lot line; and a rear yard with a minimum depth of 24'-3", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2012.

## 3-12-BZ

### CEQR #12-BSA-059K

APPLICANT – Sheldon Lobel, P.C., for Mr. Michael Weissman, owner.

SUBJECT – Application January 4, 2012 – Special Permit (§73-622) for the enlargement an existing single family home, contrary to floor area (§23-141(b)) and side yard (§23-461(b)) requirements. R4 zoning district.

PREMISES AFFECTED – 1913 East 28<sup>th</sup> Street, east side of East 28<sup>th</sup> Street, 100' south of Avenue S. Block 7307, Lot 88. Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 28, 2011, acting on Department of Buildings Application No. 320405931, reads in pertinent part:

1. Proposed plans are contrary to ZR § 23-141(b) in that the proposed floor area ratio (FAR) exceeds the maximum permitted.
2. Proposed plans are contrary to ZR § 23-461(b) in that the proposed side yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on March 20, 2012, after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 15, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side

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of East 28<sup>th</sup> Street, between Avenue S and Avenue T, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with a floor area of 2,063 sq. ft. (1.03 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,063 sq. ft. (1.03 FAR) to 2,458 sq. ft. (1.23 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4'-6" (a minimum width of 8'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant notes that the adjacent home to the south of the site, at 1915 East 28<sup>th</sup> Street, is a three-story single-family home with a floor area of 4,591 sq. ft. (2.3 FAR); and

WHEREAS, the applicant further notes that at least three other homes in the vicinity of the site were enlarged pursuant to the special permit under ZR §73-622, and that the subject homes had FARs of 1.22, 1.30, and 1.34, respectively, and therefore the proposed FAR of 1.23 is consistent with the nature of residential development in the surrounding area; and

WHEREAS, the applicant notes that a block like the subject block entirely within an R4 zoning district may be eligible for the predominantly built-up regulations, which include an increased floor area of 1.35 FAR as-of-right, but because the existing front yard of 4'-6" does not satisfy the minimum depth of 10'-0", the predominantly built-up area regulations cannot be applied to the subject site, thus the floor area request is necessary; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR

§§ 73-622 and 73-03, to permit, within an R4 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 9, 2012"- (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,458 sq. ft. (1.23 FAR); a front yard with a depth of 4'-6"; a side yard with a minimum width of 4'-6" along the southern lot line; no side yard along the northern lot line; and a rear yard with a depth of 31'-9", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 15, 2012.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Joseph Goldbloom of Council Member Leroy Comrie, Bryan Block of Community Board 13Q, Kelli M. Singleton, Jeanne Richardson, Dorothy Miller, Euclid C. Jordan and Henry Euler.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for continued hearing.

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## 71-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 1:30 P.M., for continued hearing.

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## 96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6<sup>th</sup> Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of east 6<sup>th</sup> Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 1:30 P.M., for adjourned hearing.

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## 107-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.

SUBJECT – Application August 3, 2011 – Variance (§72-21) to permit the enlargement of a synagogue (Congregation Yeshiva Bais Yitzchok) contrary to the bulk requirements for community facility buildings. R4-1 zoning district.

PREMISES AFFECTED – 1643 East 21<sup>st</sup> Street, east side of 21<sup>st</sup> Street between Avenue O and P, Block 6768, Lot 84, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 1:30 P.M., for continued hearing.

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## 192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik, Larry Rampulla, Barbara J. Cohen, Beata Kozlorsky, Alex Veksler and Deborah Bisconti.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for continued hearing.

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## 20-12-BZ

APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Retro Fitness*) in an under construction mixed residential/commercial building. M1-2/R6B zoning district.

PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3<sup>rd</sup> Street, northeast corner of Berry and N. 3<sup>rd</sup> Streets, Block 2351, Lot 1087, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eldud Gothelf.

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 1:30 P.M., for continued hearing.

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## 26-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Elmnic, LLC, owner.

SUBJECT – Application February 3, 2012 – Special Permit (§73-52) to allow the extension of accessory commercial parking in a residential zoning district. C1-2/R6B & R4-1 zoning districts.

PREMISES AFFECTED – 73-49 Grand Avenue, northwest corner of the intersection formed by Grand Avenue and 74<sup>th</sup> Street, Block 2491, Lot 40, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 1:30 P.M., for decision, hearing closed.

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## 31-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application February 8, 2012 – Special Permit (§73-50) to seek a waiver of rear yard requirements (§33-

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292) to permit the construction of commercial building. C8-3 zoning district.

*Jeff Mulligan, Executive Director*

PREMISES AFFECTED – 280 West 155<sup>th</sup> Street, corner of Frederick Douglas Boulevard and West 155<sup>th</sup> Street, Block 2040, Lot 48, 61 & 62, Borough of Manhattan.

*Adjourned: P.M.*

**COMMUNITY BOARD #10M**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for continued hearing.

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**49-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Laterra, Inc., owner; Powerhouse Gym “FLB”, Inc., lessee.

SUBJECT – Application March 2, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Powerhouse Gym*) in a portion of an existing one-story commercial building. C2-2\R5B zoning district.

PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, northeast corner of Francis Lewis Boulevard and 34<sup>th</sup> Avenue, Block 6077, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Richard Lobel and Henry Euler.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for decision, hearing closed.

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**53-12-BZ**

APPLICANT – Law Office of Frederick A. Becker, for Linda Laitz and Robert Laitz, owners.

SUBJECT – Application March 8, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); less than the minimum required side yard (§23-461 & §23-48) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1232 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue L and Avenue M, Block 7644, Lot 59, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Absent: Commissioner Montanez.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 12, 2012, at 1:30 P.M., for decision, hearing closed.

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## \*CORRECTION

This resolution adopted on September 13, 2011, under Calendar No. 259-06-BZ and printed in Volume 96, Bulletin Nos. 36-38, is hereby corrected to read as follows:

### 259-06-BZ

APPLICANT – Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application July 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of an existing one and two-story synagogue which expired on June 12, 2011. R-5 (OP) zoning district.

PREMISES AFFECTED – 1885-1891 Ocean Parkway, northeast corner of Ocean Parkway and Avenue S, Block 6682, Lot 60, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, in an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing one- and two-story synagogue, which expired on June 12, 2011; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue S, in an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed enlargement of an existing one- and two-story synagogue, which does not comply with applicable zoning requirements for floor area ratio, open space, lot coverage, side yards, front yards, wall height, setback, sky exposure plane, parking and landscaping, contrary to ZR §§ 23-141(b), 23-464, 23-662, 113-12, 23-45, 23-631, 25-18, 25-31 and 113-30; and

WHEREAS, substantial construction was to be completed by June 12, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing

delays, construction has not yet commenced on the site and additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 12, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on June 12, 2015; *on condition*:

THAT substantial construction shall be completed by June 12, 2015;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 302146997)

Adopted by the Board of Standards and Appeals, September 13, 2011.

**\*The resolution has been revised to correct the Block No. which read: “Block 682”... now reads: Block 6682”. Corrected in Bulletin No. 21, Vol. 97, dated May 23, 2012.**

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## \*CORRECTION

This resolution adopted on May 18, 2010, under Calendar No. 220-08-BZ and printed in Volume 95, Bulletin No. 21, is hereby corrected to read as follows:

### 220-08-BZ

#### CEQR #09-BSA-056K

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district. PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

#### COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 30, 2007, acting on Department of Buildings Application No. 310020410 reads, in pertinent part:

“Proposed...one (1) family dwelling (UG 2) in the subject M1-1 district is contrary to ZR 42-10, and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a three-story and basement single-family home, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in the *City Record*, with continued hearings on December 15, 2009, March 23, 2010 and April 27, 2010, and then to decision on May 18, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Council Member Letitia James provided testimony in support of this application; and

WHEREAS, the site is located on the east side of Taaffe Place between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 87 feet, and a total lot area of 2,129 sq. ft.; and

WHEREAS, the site is occupied by a non-conforming two-story single-family home located at the rear of the property with a floor area of 1,534 sq. ft. (0.72 FAR) (the “Existing Home”), which is proposed to be demolished; and

WHEREAS, the applicant represents that the current residential use has existed without interruption since approximately 1887, and is therefore a legal non-conforming use; and

WHEREAS, the applicant proposes to build a three-story and basement single-family home with a floor area of 4,678 sq. ft. (2.19 FAR); and

WHEREAS, the applicant initially proposed a two-story and basement home which covered nearly the entire lot, with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, the Board notes that the applicant's original proposal did not include the square footage located in the basement towards the floor area calculations, and listed the floor area as 3,462 sq. ft. (1.63 FAR), but that when the basement is included the proposal had a floor area of 5,236 sq. ft. (2.46 FAR); and

WHEREAS, at hearing, the Board directed the applicant to reduce the size of the proposed home and to include the basement in the floor area calculations; and

WHEREAS, in response, the applicant revised its plans to the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR) including the basement, a total height of 39'-2 1/2", and a rear yard with a depth of 34'-9 3/4"; and

WHEREAS, residential use is not permitted in the M1-1 district; therefore, the applicant seeks a variance to permit the non-conforming use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the small size of the lot; and (2) the obsolescence of the existing building; and

WHEREAS, as to the lot's size, the applicant states that the lot has a width of 25 feet and a depth of 87 feet; and

WHEREAS, the applicant represents that the 25-ft. width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floor plates to support a commercial or manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a land use map indicating that all conforming developments in the surrounding area are located on lots with widths exceeding that of the subject site; and

WHEREAS, the applicant represents that many lots in the area also have a greater depth than the subject site, and that any conforming development on the site would be undersized due to the site's shallow depth in conjunction with its narrow width; and

WHEREAS, the Board notes that while the surrounding area includes several lots of similar size, such lots are primarily occupied by residential uses; and

WHEREAS, however, unlike other such lots occupied by residential buildings, the applicant represents that the Existing Home is obsolete for its intended purpose and therefore must be demolished; and

WHEREAS, as to the functional obsolescence of the Existing Home, the applicant represents that it is no longer suitable for residential use due to its age, construction, floor



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plate, floor-to-ceiling heights, size, and structural condition; and

WHEREAS, the applicant further represents that the above-mentioned features of the Existing Home make it similarly unsuitable for any conforming use; and

WHEREAS, the applicant states that the Existing Home was built prior to 1887; and

WHEREAS, the applicant submitted a certificate of occupancy which reflects that the subject site was occupied by a single-family home on July 7, 1961, and states that the single-family home was also recorded on an 1887 Sanborn map; and

WHEREAS, the applicant submitted a report by a consulting engineer (the "Engineer's Report"), which stated that the existing building cannot be renovated or rehabilitated for residential use due to its poor structural condition; and

WHEREAS, specifically, the Engineer's Report found that the Existing Home has the following structural problems: (1) substandard floor-to-ceiling heights, as the second floor of the building has a floor-to-ceiling height of only 7'-3"; and (2) lot line windows which are incapable of providing legal light and ventilation; and

WHEREAS, the Engineer's Report also noted conditions reflecting the general deterioration of the Existing Home, such as damage to the walls and ceiling, portions of the flooring have buckled, the roofing membrane is unsatisfactory, and the wood studs are deteriorated; and

WHEREAS, the Engineer's Report concluded that the Existing Home was built to obsolete standards which are inconsistent with modern building requirements and would necessitate demolition to meet current Building Code requirements; and

WHEREAS, the applicant notes that the existing home is also set back on the lot such that there is an oversized front yard and no rear yard, which is out of context with the other buildings on the subject block, all of which are situated closer to the street line; and

WHEREAS, the Board agrees that the home is obsolete to be re-used, and notes that demolition of the building results in a clear site that nevertheless is unique due to its narrowness and shallow depth; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed a conforming manufacturing building with a total floor area of 2,129 sq. ft.; and

WHEREAS, the feasibility study concluded that the conforming scenario would not realize a reasonable return, and that the requested variance is necessary to develop the site with a habitable home; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed

building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the surrounding area is a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant states that the proposed residential use is consistent with the character of the area, which includes many residential buildings; and

WHEREAS, in support of the above statements, the applicant submitted a 400-ft. radius diagram showing the various uses in the vicinity of the site, which indicates that a number of residential buildings are located in the area surrounding the subject site; and

WHEREAS, specifically, the radius diagram reflected that residential buildings are located directly adjacent to the site on both the north and south sides and to the rear of the site; and

WHEREAS, the Board agrees that there is a context for residential use in the area and finds that the introduction of a single-family home will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant notes that the proposed 2.19 FAR is within the zoning district parameters of the adjacent R6 district and that no bulk waivers are requested; and

WHEREAS, the applicant submitted a neighborhood study indicating that a number of the smaller residential buildings on the subject block have floor areas larger than the proposed home and FARs ranging between 2.2 and 2.36; and

WHEREAS, the neighborhood study also reflected that at least seven residential buildings on the subject block have heights of 44'-0" or greater; and

WHEREAS, the applicant notes that the proposal also provides a 34'-9 3/4" rear yard, which is consistent with the adjacent R6 zoning district, which requires a rear yard with a minimum depth of 30'-0"; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the site; and

WHEREAS, as noted above, the applicant initially proposed a two-story and basement home with a floor area of approximately 5,236 sq. ft. (2.46 FAR), a total height of 48'-0", and a rear yard with a depth of 1'-2"; and

WHEREAS, during the course of the hearing process, and at the Board's direction, the applicant revised its plans to provide the current proposal for a three-story and basement home with a floor area of 4,678 sq. ft. (2.19 FAR), a total height of 39'-2 1/2", and a rear yard with a depth of 34'-9 3/4"; and

WHEREAS, at hearing, the Board questioned the amount of relief being requested, specifically with regards to the size of the home; and

WHEREAS, in response, the applicant noted that the size

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of the home is similar to the size of two-family or multiple dwellings that would be economically feasible; and

WHEREAS, in support of this assertion, the applicant provided additional analysis related to the feasibility of a similarly sized two-family home; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) 09BSA056K, dated June 25, 2008; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials; and

WHEREAS, DEP has reviewed the April 2008 Phase I Environmental Site Assessment report and May 2009 Construction Health and Safety Plan and finds them acceptable and has concluded that the construction and use of the site will not result in significant adverse hazardous materials impacts; and

WHEREAS, DEP concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval and issuance of a Notice of Satisfaction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the construction of a

three story and basement single-family home, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received April 15, 2010”– (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: three stories and basement, a maximum floor area of 4,678 sq. ft. (2.19 FAR); a total height of 39’-2 ½”; and a rear yard with a depth of 34’-9 ¾”, as shown on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 18, 2010.

**\*The resolution has been Amended. Corrected in Bulletin No. 21 Vol. 97, dated May 23, 2012.**

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## \*CORRECTION

This resolution adopted on January 24, 2012, under Calendar No. 128-11-BZ and printed in Volume 97, Bulletin Nos. 4-5, is hereby corrected to read as follows:

### 128-11-BZ

#### CEQR #12-BSA-010K

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23<sup>rd</sup> Street, west side of East 23<sup>rd</sup> Street, between Avenue R and Avenue S, Block 6828, Lot 31, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 8, 2011, acting on Department of Buildings Application No. 320325028, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, and then to decision on January 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23<sup>rd</sup> Street, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,127 sq. ft. (0.53 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,127 sq. ft. (0.53 FAR) to 3,964 sq. ft. (0.99 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 57 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 43 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-3 5/16", and to maintain the existing side yard along the southern lot line with a width of 8'-10 1/2" (two side yards with minimum widths of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning

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district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received November 16, 2011”-(7) sheets and “January 11, 2012”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,964 sq. ft. (0.99 FAR); a minimum open space ratio of 57 percent; a maximum lot coverage of 43 percent; a side yard with a minimum width of 4’-3 5/16” along the northern lot line; a side yard with a minimum width of 8’-10 ½” along the southern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2012.

**\*The resolution has been revised to correct the open space ratio and lot coverage, which read in part: “...open space ratio of 61 percent and lot coverage of 42 percent...” now reads: “...open space ratio of 57 percent and lot coverage of 43 percent...”. Corrected in Bulletin No. 21, Vol. 97, dated May 23, 2012.**

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# MINUTES

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**\*SPECIAL NOTICE\***

**Please be advised that Cal. No. 129-11-BZ has been moved  
from JUNE 19, 2012 to JUNE 12, 2012 for DECISION.**

**129-11-BZ**

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3<sup>rd</sup> Avenue. Block 447, Lot 43. Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to *June 12, 2012*, at 1:30 P.M., for deferred decision.

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 97, Nos. 22-24

June 14, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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635-57-BZ	115 East 69 <sup>th</sup> Street, Manhattan
433-61-BZ	1702-12 East 16 <sup>th</sup> Street, Brooklyn
678-74-BZ	63 8 <sup>th</sup> Avenue, Manhattan
271-90-BZ	68-01/5 Queens Boulevard, Queens
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764-56-BZ	200-05 Horace Harding Expressway, Queens
203-07-BZ	137-35 Elder Avenue, Queens

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# DOCKET

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New Case Filed Up to June 5, 2012  
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**156-12-BZ**

816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot(s) 90, Borough of **Brooklyn, Community Board: 8**. This application is filed pursuant to Z.R.§72-21, as amended, to request a variance of minimum inner court dimensions (ZR 23-851) to permit construction of a mixed-use affordable housing building with ground floor commercial use at the premises. R7A/C1-4 district.  
-----

**157-12-A**

Hovenden Road, Somerset Street and Chevy Chase Street., Block 9967, Lot(s) 58, Borough of **Queens, Community Board: 8**. Appeal challenging Department of Building's determination that an existing lot may not be developed as an "existing small lot" pursuant to ZR Section 23-33 as it does not meet the definition of ZR 12-10. R1-2 Zoning district. R1-2 district.  
-----

**158-12-A**

29-01 Borden Avenue, bounded by Newton Creek, Long Island Expressway, Hunters Point Avenue 30th Street., Block 292, Lot(s) 1, Borough of **Queens, Community Board: 4**. Appeal challenging the Department of Buildings' determination that outdoor accessory signs and structures are not a legal non-conforming accessory use pursuant to §52-00. M3-1 zoning district. M3-1 district.  
-----

**159-12-BZ**

94-07 156th Avenue, north side of 156th Avenue, between Cross Bay Boulevard and Killarney Street., Block 11588, Lot(s) 67,69, Borough of **Queens, Community Board: 10**. The application is filed pursuant to Z.R.§72-21 to request a variance of §24-36 (minimum required rear yard) to allow for the enlargement of a Use Group 4 medical office building in an R3-2 district. R3-2 district.  
-----

**160-12-BZ**

820 Concourse Village West, east side of Concourse Village West, 312.29' south of intersection of Concourse Village West and East 161st Street., Block 2443, Lot(s) 91, Borough of **Bronx, Community Board: 4**. Special Permit to allow Physical Culture Establishment (Blink) within existing commercial building. C8-3 district.  
-----

**161-12-BZ**

81 East 98th Street, corner of East 98th Street and Ralph Avenue, Block 3530, Lot(s) 1, Borough of **Brooklyn, Community Board: 16**. Application pursuant to Sect. 73-36 for a 10,010 SF PCE on the ground and second floor. C8-2 district.  
-----

**163-12-BZ**

435 East 30th Street, East 34th Street, Franklin D. Roosevelt(FDR) Drive Service Road, East 30th Street and First Avenue., Block 962, Lot(s) 80,108,1001-1107, Borough of **Manhattan, Community Board: 6**. Application for a variance to allow the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center contrary to ZR \_\_\_\_\_. R8 zoning district. R8 district.  
-----

**164-12-A**

210 Oceanside Avenue, , Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Site and building not fronting a mapped street contrary to Art. 3 Sect.36 GCL and Sect 27-291 Admin. Code of City of New York. The building is in the bed of a mapped street contrary to Art 3 Sect. 35 of the Gen. City Law. R4 district.  
-----

**165-12-BZ**

1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M., Block 7640, Lot(s) 82, Borough of **Brooklyn, Community Board: 14**. This application is filed pursuant to Z.R.§73-622, as amended, to request a special permit to allow the enlargement and partial legalization of a single family residence located in a residential (R2) zoning district. R2 district.  
-----

**166-12-A**

638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C., Block 393, Lot(s) 26, Borough of **Manhattan, Community Board: 3**. Application filed by the Department of Buildings seeking to revoke the Certificate of Occupancy that was issued in error. R8B zoning district. R8B 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.**



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# CALENDAR

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**JUNE 19, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 19, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**718-56-BZ**

APPLICANT – Walter T. Gorman, P.E., for 741 Forest Service Corp., owner; Avi Diner, lessee.  
SUBJECT – Application April 10, 2012 – Extension of Term of a previously approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which is set to expire on July 2, 2012. C2-1/R3-2 zoning district.  
PREMISES AFFECTED – 741 Forest Avenue, northwest corner North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

**COMMUNITY BOARD #1SI**  
-----

**311-71-BZ**

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.  
SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.  
PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**  
-----

**120-02-BZ**

APPLICANT – Stuart Klein, Esq., for East Village Gardens Corp., owner; Muscles Metamorphosis, lessee.  
SUBJECT – Application March 22, 2012 – Extension of Term of previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (Iron & Silk Fitness Center) which expired on February 1, 2012; an Amendment for the change in ownership; waiver of the rules. R7A zoning district.  
PREMISES AFFECTED – 42-46 Avenue A, corner of Avenue A and East 3<sup>rd</sup> Street, Block 399, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #3M**  
-----

**294-06-BZ**

APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.  
SUBJECT – Application February 8, 2012 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.  
PREMISES AFFECTED – 31-11 Broadway, between 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 613, Lots 1 & 4, Borough of Queens.  
**COMMUNITY BOARD #1Q**  
-----

**238-07-BZ**

APPLICANT – Goldman Harris, LLC, for OCA Long Island City, LLC; OCA Long Island City II, LLC, owner; OCA Long Island City III, LLC, lessee.  
SUBJECT – Application May 25, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a 13 story residential building to be used as a student dormitory (UG3) and faculty housing (UG2) for CUNY Graduate Center which expires on September 28, 2012. M1-4/R6A(LIC) & M1-4 zoning district.  
PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, western half of block bounded by 46<sup>th</sup> Road, 47<sup>th</sup> Avenue, Vernon Boulevard and 5<sup>th</sup> Street. Block 28, Lots 12, 15, 17, 18, 21 & 121, Borough of Queens.  
**COMMUNITY BOARD #2Q**  
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**APPEALS CALENDAR**

**47-12-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.  
SUBJECT – Application March 2, 2012 – Appeal seeking determination that the Department of Buildings improperly denied application for permit for new building based on erroneous decision that proposed building did not qualify for rear yard reduction pursuant to Z.R. §23-52.  
PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86' north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.  
**COMMUNITY BOARD #2SI**  
-----

**103-12-A**

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.  
SUBJECT – Application April 12, 2012 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.  
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of

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# CALENDAR

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Brooklyn.

**COMMUNITY BOARD #2BK**

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**JUNE 19, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 19, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**165-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Z.R. §72-21, as amended, to request a variance of §24-36 (rear Yard) and §24-11 (lot coverage) in order to permit the enlargement of the existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) to build an educational center on the proposed third and fourth floors and legalize two interior balconies at the second floor level of the existing building, located within the required rear yard.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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**12-12-BZ & 110-12-A**

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) to allow for a new residential building with ground floor retail in a manufacturing zone, contrary to §§42-10, 43-43 & 44-43. Also, seeking a variance of §§26(7) and 30 of the MDL (pursuant to Section 310 of the MDL) to facilitate the new building. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**58-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Shlomo Dabah, owner.

SUBJECT – Application March 15, 2012 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and opens space (§23-141); side yards (§23-461); less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3960 Bedford Avenue, west side of Bedford Avenue between Avenue R and Avenue S, block 6830, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

-----

**70-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for C.S. Edward Kang, owner; Aqua Studio NY LLC, lessee.

SUBJECT – Application March 23, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Aqua Studio NY LLC*). C6-2A zoning districts.

PREMISES AFFECTED – 78 Franklin Street, between Broadway and Church Street, Block 175, Lot 4, Borough of Manhattan.

**COMMUNITY BOARD #1BK**

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**76-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #15K**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 5, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**820-67-BZ**

APPLICANT – Willy C. Yuin, R.A., for Rick Corio, Pres.  
Absolute Car, owner.

SUBJECT – Application October 28, 2011 – Extension of  
Term of an approved Variance (§72-21) for the operation of  
a automotive repair shop (UG16) which expired on  
November 8, 2011. R-3A zoning district.

PREMISES AFFECTED – 41Barker Street, east side of  
414.19' south Woodruff Lane, Block 197, Lot 34, Borough  
of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on  
condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a re-opening and  
an extension of term of a previously granted variance to permit  
the operation of an automotive repair shop (Use Group 16),  
which expired on November 8, 2011; and

WHEREAS, a public hearing was held on this  
application on February 14, 2012, after due notice by  
publication in *The City Record*, with continued hearings on  
March 20, 2012, May 1, 2012, and then to decision on June 5,  
2012; and

WHEREAS, the premises and surrounding area had site  
and neighborhood examinations by Chair Srinivasan,  
Commissioner Montanez, and Commissioner Ottley-Brown;  
and

WHEREAS, Community Board 1, Staten Island,  
recommends approval of this application; and

WHEREAS, the subject site is located on the east side of  
Barker Street, between Castleton Avenue and Woodruff Lane,  
within an R3A zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since November 13, 1945 when, under BSA  
Cal. No. 248-39-BZ, the Board granted a variance to permit the  
site to be used as an automobile repair shop, for a term of five  
years; and

WHEREAS, subsequently, the grant was amended and  
the term extended by the Board at various times; and

WHEREAS, on October 31, 1967, under the subject

calendar number, the Board granted a variance to permit the  
continuation of the existing automobile repair shop which had  
expired on February 21, 1961, for a term of five years; and

WHEREAS, subsequently, the grant was amended and  
the term extended by the Board at various times; and

WHEREAS, most recently, on August 6, 2002, the Board  
granted a ten-year extension of term, which expired on  
November 8, 2011; and

WHEREAS, the applicant now requests an additional  
ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and

WHEREAS, at hearing, the Board questioned whether  
the applicant had a permit from the Department of  
Environmental Protection (“DEP”) for the spray booth at the  
site; and

WHEREAS, in response, the applicant submitted a  
Certificate of Operation for the spray booth from DEP,  
which expires on July 19, 2015; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated October 31,  
1967, so that as amended this portion of the resolution shall  
read: “to extend the term for ten years from November 8,  
2011, to expire on November 8, 2021; *on condition* that the  
use and operation of the site shall comply with the BSA-  
approved plans associated with the prior grant; and *on  
further condition*:

THAT the term of the grant will expire on November 8,  
2021;

THAT the site will be maintained free of debris and  
graffiti;

THAT the above conditions will be reflected on the  
certificate of occupancy;

THAT all conditions from prior resolutions not  
specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 520080867)

Adopted by the Board of Standards and Appeals June 5,  
2012.

**305-00-BZ**

APPLICANT – Robert A. Caneco, for Robert Gullery,  
owner.

SUBJECT – Application April 16, 2012 – Extension of  
Time to obtain a Certificate of Occupancy for a previously  
approved Variance (§72-21) for the continued operation of a  
UG8 parking lot which expired on January 15, 2004; waiver  
of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 268 Adams Avenue, south side  
of Adams Avenue between Hylan Boulevard and Boundary

# MINUTES

Avenue, Block 3672, Lot 14, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on January 15, 2004; and

WHEREAS, a public hearing was held on this application on May 1, 2012 after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the site is located on the south side of Adams Avenue between Hylan Boulevard and Boundary Avenue, within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 15, 2002 when, under BSA Cal. No. 305-00-BZ, the Board granted a variance to permit a parking lot (Use Group 8), contrary to ZR § 22-10; a condition of the grant was that a certificate of occupancy be obtained by January 15, 2004; and

WHEREAS, the applicant notes that the variance for the subject parking lot was granted in conjunction with a variance under BSA Cal. No. 304-00-BZ to permit the enlargement of an existing auto repair center at 2044 Hylan Boulevard, which triggered the need for additional parking; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained for the parking lot because the owner did not install lighting at the site in accordance with the BSA-approved plans and the requirements of the Building Code; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that prior to obtaining a certificate of occupancy the owner will install lighting in the parking lot in accordance with the BSA-approved plans; and

WHEREAS, based upon the above, the Board finds 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 waives the Rules of Practice and Procedure, reopens, and amends the resolution, dated January 15, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on June 5, 2013; on condition that the use and operation of the site shall

comply with the BSA-approved plans associated with the prior grant; and on further condition::

THAT lighting will be installed in the parking lot in accordance with the BSA-approved plans;

THAT a new certificate of occupancy will be obtained by June 5, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 500429253)

Adopted by the Board of Standards and Appeals June 5, 2012.

## 395-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah, owner; Meyer Unsdrofer, lessee.

SUBJECT – Application April 3, 2012 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on November 1, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on November 1, 2009; waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 1232 54<sup>th</sup> Street, southwest side 242’6” southeast of the intersection formed by 54<sup>th</sup> Street and 12<sup>th</sup> Avenue, Block 5676, Lot 17, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Tzvi Friedman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a previously granted variance to permit the construction of a Use Group 4 synagogue, which expired on November 1, 2009; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, this application is brought on behalf of

# MINUTES

Congregation Imrei Yehudah, a non-profit entity; and

WHEREAS, the subject site is located on the west side of 54<sup>th</sup> Street, between 12<sup>th</sup> Avenue and New Utrecht Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since November 1, 2005 when, under the subject calendar number, the Board granted a variance to permit the construction of a new synagogue and rectory, including a rabbi's apartment and a sexton's apartment (Use Group 4), with non-compliances as to floor area, lot coverage, front wall and sky exposure plane, side and front yards, and parking; and

WHEREAS, on April 17, 2007, the Board granted an amendment to permit the addition of a second floor mezzanine connected to the synagogue on the first floor to accommodate women congregants, and other interior layout modifications; and

WHEREAS, substantial construction was to be completed by November 1, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant also requests to modify the plans to permit minor changes to the interior layout of the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and obtain a certificate of occupancy, and the requested modifications to the plans, are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 1, 2005, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction and obtain a certificate of occupancy for a term of four years, to expire on June 5, 2016, and to permit the noted modifications to the BSA-approved plans; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed and a certificate of occupancy obtained by June 5, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 301860706)

Adopted by the Board of Standards and Appeals, June 5, 2012.

## 635-57-BZ

APPLICANT – Francis R. Angelino, Esq., for Landmark 115 East 69<sup>th</sup> Street, L.P, owner.

SUBJECT – Application March 1, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the continued use of the cellar, first and second floors of a five-story building for general office use (UG6) which expired on January 26, 2012; waiver of the rules. R8B zoning district.

PREMISES AFFECTED – 115 East 69<sup>th</sup> Street, north side, 185' east of Park Avenue, Block 1404, Lot 8, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Frank Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

## 433-61-BZ

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.

SUBJECT – Application November 28, 2012 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations; Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

## 678-74-BZ

APPLICANT – Tyree Service Corp., for Capitol Petroleum Group, owners.

SUBJECT – Application March 30, 2012 – Amendment of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) with accessory uses. The application seeks to legalize the placement of fueling islands and number of fueling dispensers. C1-6 zoning district.

PREMISES AFFECTED – 63 8<sup>th</sup> Avenue, southwest corner of West 13<sup>th</sup> Street and 8<sup>th</sup> Avenue, Block 616, Lot 46, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Steve Guacci and Terry Fitzgerald.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 10 A.M., for decision, hearing closed.

## 271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for adjourned hearing.

## 37-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Vornado Forest Plaza, LLC, owner; 2040 Forest Avenue Fitness Group LLC, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Planet Fitness*) which expired on November 9, 2003; Waiver of the Rules. C8-1 zoning district.

PREMISES AFFECTED – 2040 Forest Avenue, south side of Forest Avenue between Heaney Avenue and Van Name Avenue, Block 1696, Lot 8, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

## 64-96-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.

SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.

PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14<sup>th</sup> Avenue, Block 4645, Lot 3, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

## 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3" northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

## 359-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.

SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.

PREMISES AFFECTED – 5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Block 5649, Lot 38, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

## 290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

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SUBJECT – Application February 2, 2012 – Amendment of an approved variance (§72-21) for a new residential building with ground floor commercial, contrary to use regulations. The amendment requests an increase in commercial floor area and a decrease in the residential floor area. M1-5B zoning district.

PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 10 A.M., for deferred decision.

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## 112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman by Eugene Langsam, owners.

SUBJECT – Application October 12, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a two story and cellar (UG4) synagogue (*Bnai Shloima Zalman*) which expired on September 11, 2011. R-2 zoning district.

PREMISES AFFECTED – 1089-1093 East 21<sup>st</sup> Street, between Avenue I and Avenue J, Block 7585, Lot 21 & 22, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

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## 128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Loy 31, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik, Sandy Anagnostov and Rizwan Salam.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

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## 175-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Zacker Oil Corp., owner; Leemits Petroleum, Inc., lessee.

SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously

approved gasoline service station (*Getty*) which expired on March 29, 2012. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, northeast corner of Baycheser and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 154-11-A

APPLICANT – Eric Palatnik, for Atlantic Outdoor Advertising, Inc., owner.

SUBJECT – Application October 3, 2011 – Appeal seeking reversal of a Department of Buildings’ determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 zoning district.

PREMISES AFFECTED – 23-10 Queens Plaza South, between 23<sup>rd</sup> Street and 24<sup>th</sup> Street, Block 425, Lot 5, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Borough Commissioner of the Department of Buildings (“DOB”), dated September 23, 2011, to deny the approval of Application No. 420469415, for a sign at the subject site (the “Final Determination”); and

WHEREAS, the Zoning Resolution Determination Form (“ZRD1”) (dated June 3, 2010) attached to the Final Determination reads, in pertinent part:

1. As per documentation submitted, it is established that the relationship between the sign and the use of the zoning lot (building owned by Electrical Realty Corp) for which the sign was erected in 1936 to be considered as an accessory business sign.
2. No other evidence of legal use of an advertising sign prior to 1961 was submitted. Proposed conversion to an advertising sign

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shall comply with Zoning and Building Code regulations.

Please note that, existing non-conforming accessory roof sign that existed prior to 12/15/1961 can be restored to previous non-compliance if evidence demonstrates that no discontinuance for a period of two years from 1936 onwards has occurred as per ZR 52-61; and

WHEREAS a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on May 15, 2012, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located within 200 feet of the approach to the Ed Koch Queensboro Bridge between 23<sup>rd</sup> Street and 24<sup>th</sup> Street, within an M1-9/R9 zoning district within the Special Long Island City Mixed Use District; and

WHEREAS, the site is occupied by a five-story factory building formerly occupied by Eagle Electric Manufacturing Company (“Eagle Electric”) (the “Building”) with an indirectly illuminated rooftop sign with the dimensions of 25’-0” by 78’-0” and a surface area of 1,950 sq. ft. (the “Sign”); and

WHEREAS, the Sign occupies the western edge of the roof of the Building, facing west on Queens Plaza South; and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign (the “Appellant”); and

WHEREAS, the Appellant seeks a reversal of DOB’s determination that the Sign is an accessory business sign and therefore not permitted to be used as an advertising sign based on Appellant’s contention that the Sign is a non-conforming advertising sign; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Sign was constructed in 1936 by Eagle Electric; and

WHEREAS, the Appellant asserts that Eagle Electric operated a manufacturing facility for electrical products at the site but the Building is currently vacant; and

WHEREAS, as evidenced by photographs, the Sign reflected the company name and slogans including “Since 1920 We’ve been in your home” and “Perfection is not an Accident;” and

WHEREAS, the Appellant asserts that since 1999 the Sign has been leased to a sign company which has used it as an advertising sign for different products not related to the site; and

WHEREAS, by determinations of the Queens Borough Commissioner in 2001 and 2002, the Sign was determined to be an accessory sign; specifically, the Borough Commissioner wrote: “[i]t is my determination based on the evidence submitted, to consider the sign in question a

business sign” and “It is the determination that the sign is grandfathered as an accessory business sign. The sign may not be converted to an advertising sign;” and

WHEREAS, on May 6, 2010, the Appellant again sought a Zoning Resolution Determination from DOB about whether the Sign is an advertising sign; and

WHEREAS, on June 3, 2010, DOB denied the request, which included the following determination: “. . . that the relationship between the Sign and the use of the zoning lot [established the sign] as an accessory business sign;” and

WHEREAS, on August 9, 2011, the Appellant filed a permit application (Job No. 420469415) to “chang[e] wording on existing roof-top accessory business sign;” and

WHEREAS, on September 23, 2011, DOB denied the request based on the June 3, 2010 DOB determination that the existing sign was an “accessory,” rather than an “advertising” sign; and

## RELEVANT STATUTORY PROVISIONS

### *ZR § 12-10 Definitions*

Accessory use, or accessory (2/2/11)

An "accessory use":

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either 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#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

\* \* \*

Sign, advertising (4/8/98)

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

\* \* \*

*ZR § 42-55 Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways*

. . . (c) The more restrictive of the following shall apply:

- (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to



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June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; and

## THE ACCESSORY SIGN VS. ADVERTISING SIGN ANALYSIS

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Sign was lawfully-established in 1936 as an advertising sign as defined by ZR § 12-10 and may therefore be maintained as a legal non-conforming advertising sign pursuant to ZR § 42-55(c)(1), (2) the Sign was never used in an accessory manner, as evidence by its positioning and advertising content, and (3) the Sign is a legal non-conforming advertising sign that has existed without being discontinued and may be maintained and altered pursuant to ZR § 52-83; and

WHEREAS, the Appellant relies in part on the definitions for “advertising sign” and “accessory use” set forth at ZR § 12-10 and in part on the purpose and intent of the Sign, which are conditions not addressed in the definitions; and

WHEREAS, as noted above, ZR § 12-10 defines an advertising sign as “a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#;” and

WHEREAS, the Appellant asserts that the Sign is an advertising sign because it directed attention to several Eagle Electric products (including fuses and light switches) that were sold elsewhere than the Site and, thus, meets the advertising sign definition since it directs attention to a commodity sold or offered somewhere other than upon the same zoning lot; and

WHEREAS, in further support of its claim that the Sign was established as and always was an advertising sign, the Appellant looks to the purpose, function, and intent of the Sign; and

WHEREAS, the Appellant asserts that the Sign never generated attention to a use within the site; and

WHEREAS, the Appellant asserts that the Sign’s purpose was to direct attention to Eagle Electric’s products sold elsewhere and the Sign was not directing anyone to purchase the electrical parts shown on the Sign (or any other parts) at the Building; and

WHEREAS, the Appellant also cites to the location of the Sign above the Building, visible to drivers on the Queensboro Bridge as opposed to passersby on the street, which presented a unique opportunity to promote the Eagle Electric brand; and

WHEREAS, the Appellant states that the position and display of the Sign were designed strictly for advertising purposes including its location on top of the Building, where

it is not visible from the streets adjacent to the site; and

WHEREAS, the Appellant states that the Sign did not include the Building address or directional cues leading visitors to the site; and

WHEREAS, further, the Appellant contrasts the Sign with accessory business signs which target drivers and facilitate access; and

WHEREAS, in support of its assertions regarding the intent of the Sign, the Appellant submitted letters from a former Eagle Electric employee and from consultants with expertise in New York City advertising; and

WHEREAS, one consultant stated that the Eagle Electric sign reflected a larger marketing campaign and the craftsmanship that went into the Sign exceeded that of a typical accessory sign; and

WHEREAS, the Appellant disagrees with DOB and finds that a sign can be both advertising and accessory; and notes that the ZR does not define “accessory sign”; and

WHEREAS, the Appellant asserts that the Sign does not satisfy the paragraph (a) portion of the ZR § 12-10 definition of “accessory use,” because although the Eagle Electric sign was located on the same zoning lot as the principal use of the site for the Eagle Electric factory, the Sign was not an accessory use since there was never a sufficient causal connection between the Building and Sign to form the requisite principal-accessory relationship; and therefore the Sign is not restricted from being an advertising sign;

WHEREAS, the Appellant states that in order to establish an accessory use, the accessory use must be so connected to the principal use that if the principal use were removed, the accessory use would no longer serve any logical purpose; and

WHEREAS, the Appellant cites to Matter of 7-11 Tours Inc. v. Board of Zoning Appeals of the Town of Smithtown, 90 A.D.2d 486 (2d Dept. 1982) citing Lawrence v. Zoning Bd. of Appeals of Town of North Branford, 158 Conn. 509, 512-513 (1969) for the principle that an accessory use must not be just subordinate to the primary use but also concomitant; and

WHEREAS, the Appellant states that the cessation of Eagle Electric’s operations in the Building did not eliminate the utility of the Sign and, accordingly, the Sign was not dependent upon the operation of the business; and

WHEREAS, the Appellant asserts that the Sign is not “clearly incidental to and customarily found in connection” with the manufacturing use of the Building as per paragraph (b) of the ZR § 12-10 definition of “accessory use”; and

WHEREAS, the Appellant asserts that the language “clearly incidental to” in paragraph (b) of the definition requires that a sign and a business cannot be separated from each other and that the Sign without the business would not serve any purpose; and

WHEREAS, the Appellant cites to the example of the McDonald’s golden arches as being “clearly incidental” to the McDonald’s restaurant in that, the Appellant asserts, the purpose of the sign is to attract customers to a specific location and not to advertise the McDonald’s brand; and

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WHEREAS, the Appellant states that there was no relationship between the use of the Building and the Sign because the Sign could logically remain in its location regardless of the use of the Building; and

WHEREAS, secondly, the Appellant asserts that the Sign was not of the kind that is “customarily found in connection with” the use of the Building because such a sign would not have been installed if the Building were not located in view of such a significant amount of vehicular and train traffic; and

WHEREAS, the Appellant asserts that because the Sign’s design and large size can be distinguished from other signs on the roofs of other buildings in the vicinity, it does not meet the condition of being customarily found; and

WHEREAS, the Appellant cites to other Eagle Electric signs on other nearby Eagle Electric buildings which it finds to be examples of accessory signs because they are customarily found on buildings; and

WHEREAS, however, the Appellant concedes that the requirement set forth at paragraph (c) of the “accessory use” definition is met in that the Sign and Building were in common ownership and on the same zoning lot; and

WHEREAS, as to the continued use of the Sign, the Appellant asserts that pursuant to ZR § 42-55(c)(1) an advertising sign in an M1 district displayed within 660 feet of an arterial highway prior to June 1, 1968 may be granted non-conforming status as to its size; the text was adopted in 2001 rendering advertising signs non-conforming; and

WHEREAS, the Appellant asserts that the Sign was constructed in 1936 and is within 660 feet of the Queensboro Bridge and therefore should be deemed a non-conforming advertising sign pursuant to ZR § 42-55(c)(1); and

WHEREAS, the Appellant asserts that the Sign may be structurally altered as a non-conforming sign within a manufacturing district; and

WHEREAS, the Appellant states that under ZR § 52-83, any sign deemed as a non-conforming advertising sign under ZR § 42-55(c)(1) may be altered, reconstructed, or replaced provided there is no increase in the degree of non-conformity; and

WHEREAS, finally, the Appellant asserts that DOB’s current position is inconsistent with its previous determinations that the Sign was an advertising sign; and

WHEREAS, the Appellant cites to two prior Board cases to support its assertion that DOB and the Board have viewed similar signs as advertising signs; the first case is the Newport Cigarette sign (BSA Cal. No. 45-96-A), which involved a site occupied by a gasoline service station and a Use Group 6 retail store with a sign advertising Newport cigarettes that had a dimension of 48’-0” by 14’-0” located on a sign structure that extended 62’-0” off the ground facing an arterial highway; DOB and the Board rejected it as an accessory sign, finding that “the sign [was] larger than the store itself” and that to be accessory, a sign must be “directing attention to the business on the zoning lot, as opposed to the sale of the product generally”; and

WHEREAS, the Appellant draws a parallel between

the Sign and the Newport sign in that both are large signs elevated above the site that do not direct attention to the lot, do not provide information to direct drivers to the premises, are not readily visible to those in the immediate vicinity, face only the arterial highway and refer to products generally sold throughout the City, and do not direct attention to the business on the zoning lot as opposed to the sale of the product generally; and

WHEREAS, secondly, the Appellant cites to the New York Post case (BSA Cal. No. 90-99-A) in which there was a 50’-0” by 25’-0” sign on the upper side of a six-story building owned by the New York Post; the sign included a photograph of the New York Life Building with text “Humanity is our cornerstone/New York Life” and at the bottom of the photograph “as advertised in the New York Post;” and

WHEREAS, the Appellant asserts that the Eagle Electric sign is similar to the New York Post sign since the mention of Eagle Electric is insufficient to determine that the sign directs a viewer to the zoning lot; and

WHEREAS, the Appellant also points to the Pepsi sign in Long Island City, which remains and is identified as an advertising sign despite the cessation of Pepsi operations at the site; and

WHEREAS, lastly, the Appellant cites to Contest Promotions-NY v. NYC Department of Buildings, Sup. Ct. NY County, October 15, 2010, Rakower, J., Index No. 112333/10, for the principle that the court affirmed that the contest promotion signs were accessory business signs because they reflected “a contest that’s being held within the business” (p. 122); the Appellant distinguished the subject facts in which one could not participate in an activity referenced on the Sign at the site as there were not any electrical parts for sale at the subject lot and there was no possibility for a person to manufacture his or her own parts at the site; and

## DOB’s POSITION

WHEREAS, DOB makes the following primary points to support its position that the Sign is an accessory sign: (1) an advertising sign was never lawfully established; and (2) the advertising sign has not been shown to have existed without discontinuance; and

WHEREAS, as to the classification of the Sign, DOB asserts that the ZR § 12-10 definitions of advertising sign and accessory use establish the necessary distinctions between the two classifications of signs; and

WHEREAS, DOB identifies the distinction as accessory signs direct attention to activity *on* the zoning lot and advertising signs direct attention to activity *off* the zoning lot; and

WHEREAS, DOB notes that advertising signs have been prohibited at the site since June 28, 1940 (see 1916 ZR, Art. V § 21-B), were prohibited per the 1961 ZR § 42-53, and remain prohibited under the current zoning as set forth at ZR § 42-55; and

WHEREAS, DOB notes that accessory signs were permitted at the site under the 1916 Zoning Resolution and are permitted today, with certain limitations; and

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WHEREAS, DOB states that it found in 2001, 2002, 2010, and 2011 that to the extent the Sign was established at the site in the 1930s, it was a legal accessory sign; and

WHEREAS, DOB states that the Appellant conceded that only the Eagle Electric sign existed at the site as of the establishment of the Sign and that one sign could not simultaneously establish an accessory and an advertising sign because the establishment of one by definition precludes establishment of the other; and

WHEREAS, accordingly, DOB concludes that an advertising sign did not exist at the site as of June 28, 1940 and cannot exist today; and

WHEREAS, DOB states that the Eagle Electric sign was accessory because it was “located on” and “directed attention to” the “*same* zoning lot” as the Eagle Electric manufacturing facility and the fact that customers may not have visited the site is irrelevant; and

WHEREAS, DOB notes that there is not any exception for a sign that does not directly invite customers to transact retail business on the lot nor for a sign that does not identify the address of the business identified by the sign; and

WHEREAS, finally, the Appellant asserts that it is irrelevant whether the Sign was “intended” to build brand recognition or expand the business’ image; and

WHEREAS, DOB states that the Sign could not have been an advertising sign since it was located on the same lot as Eagle Electric; and

WHEREAS, DOB states that the Sign was established as an accessory sign and remained as such until its removal; however, since it was removed prior to February 27, 2001, any accessory sign at the site is subject to the restrictions of ZR §§ 42-53 through 42-55 which limit the size of such signs to 500 sq. ft. of surface area; and

WHEREAS, DOB states that even if it accepted a single undated photograph to cover the period from 1936 to 1999 to establish that the Sign existed at the site from December 15, 1961 to 1999, the only other evidence of there being an advertising sign at the site for the subsequent 12 years is six photographs dated July 16, 2011, reflecting a Lexus automobile advertising sign; and

WHEREAS, additionally, as to the decision in Contest Promotions-NY, LLC v. NYC Department of Buildings, Sup. Ct, NY County, October 15, 2010, Rakower, J., Index No. 112333/10, DOB asserts that the Appellant’s reliance is misplaced; and

WHEREAS, DOB states that the case involved a challenge to a DOB interpretation that certain proposed signs were advertising, rather than accessory and it does not have any relevance to the facts of the subject appeal; additionally, the Appellate Division reversed Judge Rakower’s decision on March 6, 2012 citing that the property owner had failed to exhaust administrative remedies; and

## THE SIGN’S CONTINUITY

WHEREAS, as to continuity, the Appellant asserts that the presence of the Sign has been continuous and obvious; and

WHEREAS, the Appellant asserts that DOB has

acknowledged that the Sign was installed in 1936; and

WHEREAS, the Appellant’s evidence to establish the Sign’s continuity through 2000 includes a letter from a former Eagle Electric employee which addresses the Sign’s presence in the 1940s; an artist’s statement that she viewed the Sign in 1989 and 2000; and the complexity of the Sign’s construction which includes painted metal, neon, and illumination; and

WHEREAS, the Appellant cites to DOB’s acknowledgment that where a sign contains the same copy over a period of time, substantial weight may be given to an argument of continuity; and

WHEREAS, the Appellant did not submit additional photographs of the Sign’s continuity but rested on the prominent location and the fact that the Sign would have been difficult to dismantle and reassemble; and

WHEREAS, as to the use since 2000, the Appellant submitted invoices and contracts from the Sign Company since it took control of the Sign in 1999; and

WHEREAS, the Board notes that the Appellant could restore the Sign to the non-conforming accessory dimensions if it has not been discontinued for more than two years, however the Appellant concedes that the Eagle Electric sign has been removed and an accessory sign has not been installed on the site for more than two years; thus, an accessory sign can no longer be installed at the formerly permitted dimensions; and

WHEREAS, as to the question of continuity, DOB states that even if the Sign were deemed to be advertising rather than accessory, the Appellant has not established that such sign existed on December 15, 1961 (the relevant date for the Sign being protected as a non-conforming use) and has continued without an interruption of two or more years pursuant to ZR § 52-61; and

WHEREAS, DOB states that the evidence submitted – one photograph of the Sign from the period of 1936 to 1999 and an affidavit from an Eagle Electric employee - fails to satisfy its standards as summarized in Technical Policy and Procedure Notice 14/1998; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the Sign was established as an accessory sign as it meets the ZR § 12-10 definition of accessory use and fails to meet the ZR § 12-10 definition of advertising sign; and

WHEREAS, the Board finds that the Sign meets the criteria of “accessory” because at its establishment and through its removal, the Sign was (1) “a use conducted on the same zoning lot as the principal use to which it is related;” (2) “clearly incidental to and customarily found in connection with such principal use;” and (3) “in the same ownership as such principal use or is operated and maintained on the same zoning lot;” and

WHEREAS, the Board disagrees with the Appellant that only the third condition is met as the Sign was a use conducted on the same zoning lot as the related principal use (the manufacturing business) and the Board also finds that a sign identifying the specific business on the site is clearly incidental to and customarily found throughout New York

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City and beyond; and

WHEREAS, the Board finds it misguided for the Appellant to assert that there was no relationship between the use of the Building and the Sign as a sign for a business that operates on the site most certainly has a relationship to the business on the site; and

WHEREAS, the Board finds that the ZR § 12-10 definition of “advertising sign” is clear that the two classifications of signs are mutually exclusive as the definition clearly states that an advertising sign is “not accessory to a use located on the zoning lot;” and

WHEREAS, the Board does not find any basis to evaluate the purpose, function, and intent of the Sign when the definition is clear and unambiguous; and

WHEREAS, the Board notes that lack of visibility to passersby and a retail function or the complexity of sign construction and its message are not elements of the definition and cannot lead to a conclusion that the Sign was intended to advertise rather than to be accessory; and

WHEREAS, the Board asserts that by the Appellant’s reasoning that patrons be able to visit sites in order for the signs to be considered accessory, no manufacturing business could have an accessory sign and all signs on manufacturing buildings would be considered advertising signs; the text does not support such a conclusion; and

WHEREAS, the Board asserts that there would be many fewer accessory signs if one of the conditions for an advertising sign is that if a sign remains after the associated business ceases the sign still serves a purpose; by that reasoning, any time a business has multiple locations, the argument could be made that the associated sign is not accessory because the business could leave and the sign could still serve a purpose of advertising other branches of the business or the brand, generally; and

WHEREAS, the Board is not persuaded by the Appellant’s distinction between the Sign and accessory business signs located at different Eagle Electric buildings; to the contrary, the Board finds the Sign is similar in size, location and copy, including the slogan, as the other signs which the Appellant concedes are accessory business signs; and

WHEREAS, neither is the Board persuaded by the Appellant’s McDonald’s example in that the McDonald’s sign would serve the purpose of promoting the McDonald’s brand absent the restaurant as is the case with businesses with multiple branches; a sign established as an accessory use to a principal business use may very well still provide a purpose after the business ceases to operate at the site; in fact, the Board finds that the McDonald’s signs are a good comparison in that they generally do not include addresses or instructions for how to access the site and can be seen as vehicles for brand recognition, and yet, they are most often accessory signs to the restaurant on site; and

WHEREAS, the Board distinguishes the two prior Board cases the Appellant cites;

WHEREAS, specifically, in its decision in the Newport case, the Board noted that the sign was larger than the store, and that when a sign directs attention to a product

generally sold throughout the City, the sign must be designed so that it is clear that it is “accessory” to and directing attention to the business on the zoning lot as opposed to the sale of the product generally; and

WHEREAS, the Board further notes that DOB considered a variety of factors in determining that the large Newport advertising sign was not accessory to the convenience store; two of the primary factors were that (1) such a large sign, which is larger than the store itself does not satisfy the accessory requirement that the sign be incidental to the primary use and (2) it was not satisfied that such a sign was “customarily found” in connection with a comparable type of retail store; additionally, the Board agreed with DOB’s interpretation “that a sign may refer to a product rather than a business name, where the business at the site is readily identified by the product;” such a conclusion was not possible in the Newport example for a store which sold many products, but fits well for Eagle Electric as the business at the site was readily identified by the products reflected on the Sign; and

WHEREAS, as to the New York Post example, the New York Post sought to have the sign recognized as an accessory business sign since it referenced the newspaper which was published in the subject building but DOB determined that it was an advertising sign because the citation to the New York Post was not the focus of the sign; and

WHEREAS, the Board notes that in the New York Post example the sign’s primary purpose was to advertise the New York Life Company (and was not directly related to the principal newspaper business on the site), a business and product available elsewhere than the zoning lot and that the mention of the New York Post at the bottom of the sign did not suffice to extinguish the advertising nature of the sign, within the ZR § 12-10 definition; and

WHEREAS, the Board does not find the identification of the Pepsi sign as an advertising sign to be dispositive that the Eagle Electric sign is also an advertising sign; further, the Board notes that the Appellant does not seek to maintain the Eagle Electric sign after the cessation of the Eagle Electric operations at the site, but the Appellant has rather changed the Sign to advertise products and businesses which do not now nor ever did occupy the site, unlike the Pepsi sign which remains as a vestige after the cessation of the Pepsi business at the site; and the Board is not persuaded by the nexus argument and finds that there was a nexus between the Pepsi sign and the Pepsi business formerly at the site; and

WHEREAS, as to the question of continuity, the Board finds that since the threshold matter of the classification of the Sign is not met, it is not necessary to address whether there has been any two-year discontinuous of the Sign; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that the Sign was established as an advertising sign prior to 1940 and, thus, is not eligible for legal non-conforming status as an advertising sign today; and

WHEREAS, based on the limited evidence in the

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record, the Board finds that the Sign was established as an accessory sign likely in 1936 and that its status as an accessory sign eligible for the pre-2001 accessory sign regulations ceased at the Appellant's admitted 1999 removal of the Eagle Electric sign; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's application to change the copy of the Sign because it is an accessory sign.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated September 23, 2011, is hereby denied.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## 173-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Southside Manhattan View LLC, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking a determination that the owner of the premises has acquired a common law vested right to complete construction under the prior R4 zoning. R4-1 Zoning district.

PREMISES AFFECTED – 68-10 58<sup>th</sup> Avenue, south side of 58<sup>th</sup> Avenue, 80' east of intersection of 58<sup>th</sup> Avenue and Brown Place, Block 2777, Lot 11, Borough of Queens.

## COMMUNITY BOARD #5Q

### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Appeal granted.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete the enlargement of a mixed-use residential/commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on April 3, 2012, after due notice by publication in *The City Record*, with a continued hearing on May 1, 2012, and then to decision on June 5, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Queens, recommended disapproval of the original iteration of this application, because it did not provide off-street parking for the eight apartment units; and

WHEREAS, the site is located on the south side of 58<sup>th</sup> Avenue between Brown Place and 69<sup>th</sup> Street, within an R4-1 zoning district; and

WHEREAS, the site has 80 feet of frontage on 58<sup>th</sup> Avenue, a depth of 100 feet, and a total lot area of 8,000 sq. ft.; and

WHEREAS, the applicant proposes to construct a three-story (including basement) horizontal enlargement consisting of six apartment units to the existing 4,722 sq. ft. two-story mixed-use residential/commercial building, and to convert the second floor of the existing building into two apartment units, resulting in a total of eight apartment units and a total floor area of 10,782 sq. ft. (1.35 FAR); and

WHEREAS, the subject site was formerly located within an R4 zoning district; and

WHEREAS, the proposed mixed-use building complies with the former R4 zoning district parameters; and

WHEREAS, however, on July 29, 2009 (hereinafter, the "Rezoning Date"), the City Council voted to adopt the Middle Village, Glendale and Maspeth Rezoning, which rezoned the site to R4-1; and

WHEREAS, the proposed building does not comply with the R4-1 district parameters as to floor area and density; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the Board notes that Alteration Permit No. 401996337-01-AL (the "Permit"), which authorized the proposed enlargement of the building and conversion of the second floor of the existing building pursuant to R4 zoning district regulations was issued on August 8, 2005; and

WHEREAS, the Board notes that, as of the Rezoning Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on July 29, 2011, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated February 29, 2012, the Department of Buildings ("DOB") states that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Rezoning Date; and

WHEREAS, the Permit lapsed by operation of law on the Rezoning Date because the plans did not comply with the new R4-1 zoning district regulations and DOB determined that the required work had not been completed; and

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WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on the Rezoning Date; and

WHEREAS, in response to the Community Board's concerns regarding the lack of parking, the applicant states that the approved plans failed to indicate parking spaces that would be required pursuant to ZR § 25-23 under the R4 zoning; and

WHEREAS, the applicant submitted a reconsideration request from DOB reflecting that DOB approved the applicant's proposal to amend the plans to provide four accessory off-street parking spaces at the site, in compliance with ZR § 25-23; and

WHEREAS, assuming that valid permits had been issued and that work proceeded under them, the Board notes that a common law vested right to continue construction generally exists where: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right.' Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action;" and

WHEREAS, as to substantial construction, the applicant states that as of the two year anniversary of the Rezoning Date, the owner had completed approximately 90 percent of all work on the site, including: 100 percent of excavation, backfill, drywell installation, footing, waterproofing, structural frame installation, interior demolition, exterior walls, insulation, water and sewer mains, and windows; and

WHEREAS, the applicant states that the only remaining work on the site consists of interior finishing work, installation of roofs and gutters, and exterior landscaping and parking areas; and

WHEREAS, the applicant submitted the following evidence to support its assertions regarding completed work: affidavits from the architect and project manager; construction schedules; and photographs of the site; and

WHEREAS, the Board concludes that, based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a

significant amount of work was performed at the site prior to the rezoning, and that said work was substantial enough to meet the guideposts established by case law; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the two year anniversary of the Rezoning Date, the owner expended \$1,056,260, including hard and soft costs and irrevocable commitments, or 86 percent out of approximately \$1,227,800 budgeted for the entire enlargement; and

WHEREAS, as proof of the expenditures, the applicant has submitted expense charts and affidavits from the architect; and

WHEREAS, at hearing, the Board questioned the basis for the cost estimates in the expense charts; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the cost estimates in the expense chart are based on industry standards used when filing the proposed work with DOB based on figures on the 2010 National Construction Estimator by Craftsman Book Company, as well as over 30 years of professional experience in the field of architecture and construction; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant contends that the loss of the \$101,049 associated with pre-Rezoning Date project costs that would result if this appeal were denied is significant; and

WHEREAS, the applicant states that if required to build in accordance with the new zoning, the owner would be limited to a maximum of 0.75 FAR (0.90 with attic bonus) and a maximum density of a one- or two-family semi-detached home; and

WHEREAS, the applicant states that complying with the R4-1 district regulations would therefore require the demolition of the completed enlargement and the reconstruction of a two-family home on that portion of the site (in conjunction with the existing two-story mixed-use building) to reduce the occupancy from eight dwelling units to three dwelling units, and from an FAR of 1.35 to 0.75; and

WHEREAS, the applicant submitted a letter from a demolition company stating that the estimated cost for the

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demolition work that would be required for the site to comply with R4-1 zoning, would be approximately \$298,000; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that the estimated rental income for the entire site under R4-1 district regulations would be \$6,800 per month (\$4,200 for two three bedroom dwelling units, \$1,400 for a first floor commercial space, and \$1,200 for the second floor apartment); and

WHEREAS, the letter from the real estate broker estimated that the monthly rental income for the proposed building would be \$14,450; therefore, compliance with the R4-1 district regulations would result in a loss of \$7,650 in monthly rental income; and

WHEREAS, the Board agrees that the need to demolish portions of the existing building, redesign, the limitations of any complying construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, the serious loss projected, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law doctrine of vested rights requesting a reinstatement of DOB Permit No. 401996337-01-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, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## 19-12-A

APPLICANT – Goldman Harris LLC, for 38-30 28<sup>th</sup> Street, LLC, owner.

SUBJECT – Application January 30, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior zoning district. M1-2/R5B/LIC zoning district.

PREMISES AFFECTED – 38-30 28<sup>th</sup> Street, between 38<sup>th</sup> and 39<sup>th</sup> Avenues. Block 386, Lot 27. Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Vivien R. Krieger.

**ACTION OF THE BOARD** – Appeal granted.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of an eight-story hotel building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the site is located on the west side of 28<sup>th</sup> Street between 38<sup>th</sup> Avenue and 39<sup>th</sup> Avenue; and

WHEREAS, the site has 25 feet of frontage on 28<sup>th</sup> Street, a depth of approximately 98 feet, and a total lot area of 2,450 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with an eight-story, 16-room hotel building with a floor area of 12,250 sq. ft. (5.0 FAR) (the “Building”); and

WHEREAS, the subject site is currently located in an M1-2/R5B zoning district within the Special Long Island City District (“LIC”), but was formerly located within an M1-3D zoning district; and

WHEREAS, the Building complies with the former M1-3D zoning district parameters, specifically with respect to floor area and street wall height; and

WHEREAS, however, on October 7, 2008 (the “Rezoning Date”), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site to M1-2/R5B (LIC) zoning district, as noted above; and

WHEREAS, the Building does not comply with the M1-2/R5B (LIC) zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that Alteration Building Permit No. 402232534-01-AL was issued in July 16, 2007 (the “Permit”), authorizing the development of an eight-story hotel building pursuant to M1-3D zoning district regulations; and

WHEREAS, the Board notes that, as of the Rezoning Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained

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within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on October 7, 2010, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated February 29, 2012, DOB states that the Permit was lawfully issued, authorizing construction of the Building prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that, in addition to completing all excavation and foundation work, as of the two year anniversary of the Rezoning Date the applicant had completed approximately 30 percent of the total construction work, including 100 percent of the metal superstructure, 100 percent of the scissor stairs, 98 percent of the metal deck work, 90 percent of the concrete slab work, 86 percent of the fire proofing work, 85 percent of the standpipe work, 50 percent of the elevator work, 50 percent of the concrete block work, 50 percent of the exterior insulation and waterproofing, 20 percent of the interior insulation, ten percent of the exterior brick work, and five percent of the plumbing, sprinkler, and electrical work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction log, construction contracts, an affidavit from the construction manager, and photographs of the site showing the amount of work completed prior to the two year anniversary of the Rezoning Date; and

WHEREAS, the applicant states that certain work continued on the site after the two year anniversary of the Rezoning Date; and

WHEREAS, the Board notes that all of the work performed on or after the two year anniversary of the Rezoning Date has been discounted from the substantial construction analysis; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the two year anniversary of the Rezoning Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner expended \$3,250,978, including hard and soft costs and irrevocable commitments, out of \$3,699,800 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes 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 Rezoning Date; and

WHEREAS, the applicant further states that the owner paid an additional \$377,947.93 in soft costs related to the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, thus, the expenditures up to the two year anniversary of the Rezoning Date represent approximately 88 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also



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considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former M1-3D zoning, the floor area would decrease from the proposed 12,250 sq. ft. (5.0 FAR) to a maximum realizable floor area of 4,900 sq. ft. (2.0 FAR), representing a loss of 7,350 sq. ft. 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; and

WHEREAS, the applicant further states that in order 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; and

WHEREAS, the applicant represents that the resulting four room hotel building would not be viable; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the loss of expenditures and outstanding fees that could not be recouped and the need to demolish and redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a 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, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## 41-12-A

APPLICANT – Queen First Properties, LLC, for Mohammad Uddin, owner.

SUBJECT – Application February 15, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R5A zoning district.

PREMISES AFFECTED – 112-26 38<sup>th</sup> Avenue, 225' from the corner of 112<sup>th</sup> Street and 38<sup>th</sup> Avenue. Block 1785, Lot 10. Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a five-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the site is located on the south side of 38<sup>th</sup> Avenue between 112<sup>th</sup> Street and 114<sup>th</sup> Street; and

WHEREAS, the site has 50 feet of frontage on 38<sup>th</sup> Avenue, a depth of 125 feet, and a total lot area of 6,250 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a five-story residential building with 14 condominium units (the “Building”); and

WHEREAS, the subject site is currently located within an R5A zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters, specifically with respect to floor area; and

WHEREAS, however, on March 24, 2009 (the “Rezoning Date”), the City Council voted to adopt the North Corona 2 Rezoning, which rezoned the site to R5A, as noted above; and

WHEREAS, the Buildings does not comply with the R5A zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to a valid permit; and

WHEREAS, the applicant states that New Building Permit No. 402159132-01-NB was issued on May 11, 2006 (the “New Building Permit”), authorizing the development of a five-story residential building pursuant to R6 zoning district regulations; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained a permit for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (“DOB”) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction of the proposed building was completed, but a certificate of occupancy was not obtained within two years of the Rezoning

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Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permit pursuant to ZR §11-332 within 30 days of its lapse on March 24, 2011 and is therefore requesting additional time to complete construction under the common law and obtain a certificate of occupancy; and

WHEREAS, by letter dated May 25, 2012 DOB stated that the New Building Permit was lawfully issued, authorizing construction of the Buildings prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that since DOB vested the New Building Permit under ZR § 11-331, the owner has completed all construction on the Building and the only work that remained before obtaining a certificate of occupancy was the sprinkler sign off; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: a construction timeline, copies of cancelled checks, and photographs of the Building; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the two

year anniversary of the Rezoning Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner has expended \$1,967,992, including hard and soft costs and irrevocable commitments, out of \$1,967,992 budgeted for the entire project, or 100 percent of the total cost of the Building; and

WHEREAS, as proof of the expenditures, the applicant has submitted expense charts and copies of cancelled checks; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 12,498.5 sq. ft. (2.0 FAR) to a maximum realizable floor area under the R5A zoning district of 6,874 sq. ft. (1.10 FAR); and

WHEREAS, accordingly, the applicant states that complying with the R5A district regulations would result in the loss of approximately 5,625 sq. ft. of floor area, requiring extensive demolition of the completed building; and

WHEREAS, the applicant further states that the loss of floor area as a result of the rezoning would reduce the overall value of the project by approximately \$1,968,750; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the cost of demolition and the loss of expenditures and outstanding fees that could not be recouped and the need to redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures

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made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 402159132-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## **80-11-A, 84-11-A, 85-11-A & 103-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 331, 333, 335, 329 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 46, 45, 44, 47, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: John Bartos of NYS Senator Duane, Michele Burger of Council Member Rosie Mendez, Johana R. Duborsky of Community Board 3, and Andito L.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for continued hearing.

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## **83-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 159 West 78<sup>th</sup> Street, Corp., for Felix and Lisa Oberholzer-Gee, owners.

SUBJECT – Application June 9, 2011 – Appeal pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for a one-story enlargement of a four-story building, contrary to Multiple Dwelling Law §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 159 West 78<sup>th</sup> Street, north side of West 78<sup>th</sup> Street, between Columbus and Amsterdam Avenues, Block 1150, Lot 8, Borough of Manhattan.

### **COMMUNITY BOARD #7M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for continued hearing.

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## **155-11-A**

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction

commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for deferred decision.

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## **163-11-A**

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

### **COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Anthony Scaduto of Department of Fire.

For Opposition: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for continued hearing.

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## **180-11-A & 181-11-A**

APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.

SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 34-57 & 34-59 107<sup>th</sup> Street, between 34<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.

### **COMMUNITY BOARD #3Q**

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 10 A.M., for continued hearing.

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## **38-12-A & 39-12-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Birb Realty, owner.

SUBJECT – Application February 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R3-1 Zoning District.

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PREMISES AFFECTED – 131 & 133 Aviston Street, 80' northwest corner of intersection of Aviston Street and Riga Street, Block 4683, Lot 22, 23, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 10 A.M., for decision, hearing closed.

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## REGULAR MEETING

TUESDAY AFTERNOON, JUNE 5, 2012

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 187-10-BZ

#### CEQR #11-BSA-030Q

APPLICANT – Khalid M. Azam, Esq., owner.

SUBJECT – Application October 5, 2010 – Variance (§72-21) to permit the legalization of a three-family building, contrary to side yard zoning requirements (§23-462(c)). R6B zoning district.

PREMISES AFFECTED – 40-29 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, Block 1304, Lot 16, Borough of Queens.

#### COMMUNITY BOARD #2Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 3, 2010, acting on Department of Buildings Application No. 401711073, reads in pertinent part:

“Proposed side yard from ground level and up is contrary to section 23-462(c) ZR. A minimum of an eight foot separation is required from side lot line and building wall;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R6B zoning district, the legalization of an existing five-story (including penthouse) three-family residential

building that does not provide the required side yard, contrary to ZR § 23-462(c); and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends approval of this application; and

WHEREAS, the site is located on the east side of 72<sup>nd</sup> Street, between Roosevelt Avenue and 41<sup>st</sup> Avenue, within an R6B zoning district; and

WHEREAS, the zoning lot has a width of approximately 25'-0", a depth ranging from 106'-4" to 109'-0", and a total lot area of 2,692 sq. ft.; and

WHEREAS, the site is occupied by a five-story (including penthouse) three-family residential building with a side yard with a width of 4'-0" above the first floor along the northern lot line, and no side yard along the southern lot line; and

WHEREAS, the Board notes that pursuant to ZR § 23-462(c), no side yards are required but if an open area extending along a side lot line is provided at any level, it must have a minimum width of 8'-0"; and

WHEREAS, because the existing building provides a 4'-0" side yard above the first floor along the northern lot line, the applicant seeks the subject variance; and

WHEREAS, the Board notes that the variance application was filed on October 5, 2010; and

WHEREAS, on November 3, 2010, Board staff issued a Notice of Comments to the applicant, requesting additional information; and

WHEREAS, the Notice of Comments informed the applicant that failure to respond in a timely manner could lead to the dismissal of the application for lack of prosecution; and

WHEREAS, the Board did not receive any subsequent response from the applicant; and

WHEREAS, accordingly, the Board placed the matter on the February 14, 2012 dismissal calendar; and

WHEREAS, the applicant appeared at the February 14, 2012 hearing and submitted a written request for additional time to respond to the Board's Notice of Comments; and

WHEREAS, accordingly, the Board removed the application from the dismissal calendar and granted the applicant additional time to respond to the Notice of Comments; and

WHEREAS, the applicant now seeks a variance of the side yard requirement based on the practical difficulty and unnecessary hardship, which it represents result from reliance in good faith on DOB's approval of a "Request for Reconsideration" regarding the subject side yard non-compliance; and

WHEREAS, the applicant sets forth the following timeline for the approval and construction process: (1) on August 18, 2003, DOB approved an application for construction of the subject building based on professionally

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certified plans; (2) on October 4, 2005, after the building was substantially constructed, DOB audited the plans and issued objections, including Objection No. 9, for non-compliance with the side yard regulations of ZR § 23-462(c); (3) on May 15, 2006 the applicant submitted a “Request for Reconsideration of Objection No. 9” to DOB, proposing to address the non-compliance by extending the first floor of the building to the side lot line; (4) on May 16, 2006 the Chief Engineer of DOB’s Queens Borough Office approved the reconsideration request, stating “OK to accept that the proposed first floor will be built from side lot line to side lot line (with no side yard provided) provided that drawings will be revised to reflect the same;” (5) on August 16, 2006, the Chief Engineer updated its approval of the reconsideration request, stating “Second, third and fourth floors will remain the same;” (6) the applicant revised the drawings based upon the approved reconsideration and extended the first floor to the side lot line, thereby eliminating the 4’-0” side yard at the first floor; (7) DOB subsequently conducted a special audit, at which time it again raised an objection regarding non-compliance with side yard regulations under ZR § 23-462(c); (8) on June 4, 2010 the Queens Borough Commissioner denied the applicant’s reconsideration request regarding the side yard non-compliance with ZR § 23-462(c), stating “Denied. Contrary to 23-462(c) in that any level open space shall be provided as 8’;” and

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the good faith reliance principle when they have made expenditures towards construction that was performed pursuant to a building permit, which is later revoked due to non-compliance that existed at the time of the permit issuance; the principle is raised within the variance context when applicants assert that the reliance creates a unique hardship and seek to substitute it for the customary uniqueness finding under ZR § 72-21(a); and

WHEREAS, in Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures the property owner made in reliance on the invalid permit should be considered in the variance application because: (1) the property owner acted in good faith, (2) there was no reasonable basis with which to charge the property owner with constructive notice that it was building contrary to zoning, and (3) the municipal officials charged with carrying out the zoning resolution had granted repeated assurances to the property owner; and

WHEREAS, more recently, in Pantelidis v. Board of Standards and Appeals, 10 N.Y.3d 846, 889 N.E.2d 474, 859 N.Y.S.2d 597 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate that the state Supreme Court had conducted a good faith reliance hearing, to determine whether the property owner could claim reliance, rather than remanding the case to the Board to do so in the context of an Article 78 proceeding to overturn the Board’s denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, the Board notes, however, that the body of cases, which address the good faith reliance principle and a property owner’s ability to establish detrimental reliance which

can be introduced into a variance application, is limited to those where there is a unique history of approvals from high-level municipal officials (including the Village Board of Trustees in Jayne and DOB’s Borough Commissioner in Pantelidis) after a series of meetings on the precise matter at issue, rather than merely a review and approval by one DOB examiner; and

WHEREAS, the Board identifies the key questions that have emerged in the good faith reliance inquiry as: (1) whether the permit was void on its face; (2) whether there was any way the applicant could have known about the invalidity of the permit; and (3) whether there were multiple municipal assurances of validity; and

WHEREAS, the applicant contends that it satisfies the criteria for a finding of good faith reliance based on DOB’s approval of its “Request for Reconsideration of Objection No. 9” on May 16, 2006 and August 16, 2006, as it revised the plans and extended out the first floor to the side lot line in reliance on DOB’s approval; and

WHEREAS, however, the Board finds that the applicant has not met the standard to establish that a hardship was incurred due to good faith reliance on DOB’s approval; and

WHEREAS, ZR § 23-462(c) provides, in pertinent part, that in R6B zoning districts, “no *side yards* are required. However, if any open area extending along a *side lot line* is provided at any level, it shall measure at least eight feet wide for the entire length of the *side lot line*”; and

WHEREAS, the Board considers the text of ZR § 23-462(c) to be unambiguous, and therefore the applicant had constructive notice that the text applied to the subject site; and

WHEREAS, the Board notes that the applicant has given no justification as to why the architect, filing under the Professional Certification Program, determined that a side yard with a width of 4’-0” would be permitted under ZR § 23-462(c); and

WHEREAS, the Board further notes that the applicant has not provided evidence that there were multiple municipal assurances of validity; rather, the applicant relies on a single reconsideration issued by the Chief Engineer of the Queens Borough Office; and

WHEREAS, significantly, the reconsideration relied upon by the applicant was not issued until May 16, 2006 (and updated August 16, 2006), after construction of the building with a 4’-0” side yard along the northern lot line was substantially complete; and

WHEREAS, the Board finds that a claim of good faith reliance cannot be supported where the municipal determination which forms the basis of the applicant’s alleged good faith reliance was not issued until after the construction was complete; and

WHEREAS, further, the applicant has acknowledged that the only construction that was performed in reliance upon the 2006 reconsideration was the extension of the first floor of the building to the side lot line, which merely consisted of the addition of a one-story covered passageway along the side of the building; and

WHEREAS, the Board notes that the applicant made a

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supplemental argument that ZR § 23-462(c) does not apply to the subject building because the first floor has been extended to the side lot line, and the 4'-0" wide open area along the northern lot line above the first floor is not, by definition, a side yard, because it is not open from the lowest level of the building to the sky; and

WHEREAS, the Board considers the applicant's argument, which challenges DOB's interpretation of ZR § 23-462(c), to be outside the scope of an application for a variance; however, the Board also disagrees with the applicant's interpretation of ZR § 23-462(c), given that the text refers to "an open area extending along the side lot line...at any level," and therefore clearly contemplates the 4'-0" wide open area along the side lot line above the first floor of the subject building; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21(a) its variance request must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a), as modified by the good faith reliance doctrine, which is a threshold finding that must be met for a grant of a variance, the Board declines to address the other findings.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated September 3, 2010, acting on Department of Buildings Application No. 401711073, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## 112-11-BZ

### CEQR #12-BSA-009K

APPLICANT – Eric Palatnik, P.C., for Louis N. Petrosino, owner.

SUBJECT – Application August 9, 2011 – Variance (§72-21) to legalize the extension of the use and enlargement of the zoning lot of a previously approved scrap metal yard (UG 18), contrary to §32-10. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54<sup>th</sup> Street. Block 6947, Lot 260. Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 29, 2011, acting on Department of

Buildings Application No. 320126458, reads in pertinent part:

The proposed use of scrap metal yard, UG 18, in a C8-1 zoning district is contrary to Section 32-10 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in a C8-1 zoning district, the enlargement of the zoning lot for a scrap metal yard (Use Group 18) and the legalization of the enlargement to the existing one-story warehouse building on the site, which does not conform to district use regulations, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 31, 2012, after due notice by publication in *The City Record*, with continued hearings on March 6, 2012 and April 24, 2012, and then to decision on June 5, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Domenic M. Recchia, Jr. recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Cropsey Avenue and Bay 54<sup>th</sup> Street, within a C8-1 zoning district; and

WHEREAS, the site consists of a single lot (Lot 260) with a total lot area of 34,527 sq. ft., formed by two previously separate lots: (1) former Lot 260, an irregularly shaped lot bounded by Bay 54<sup>th</sup> Street to the north, Cropsey Avenue to the east, and the Coney Island Creek to the south, with a lot area of 24,903 sq. ft.; and (2) former Lot 8900, a narrow, irregularly-shaped lot adjacent to the west of former Lot 260, with a width of approximately 40 feet, a depth of approximately 220 feet, and a lot area of 9,624 sq. ft.; and

WHEREAS, the site is currently occupied by a scrap metal yard (Use Group 18); and

WHEREAS, the Board has exercised jurisdiction over the former Lot 260 portion of the site since March 2, 1965 when, under BSA Cal. No. 1069-64-BZ, the Board granted a variance to permit, at an existing scrap metal yard, the construction of a one-story building for the storage of scrap metal within an R4 zoning district, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended on various occasions; and

WHEREAS, on December 2, 1980, under BSA Cal. No. 703-80-BZ, the Board granted a variance to permit the enlargement of the existing scrap metal storage building into the required front yard at the site, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on July 25, 2000, the Board granted an extension of the term, which expired on December 2, 2010; and

WHEREAS, the Board notes that the applicant initially sought to file an application for an extension of term and an amendment to legalize the 822.5 sq. ft. enlargement of the existing one-story warehouse building on the site, however, the

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Board directed the applicant to file a new variance application because the applicant also seeks to enlarge the zoning lot; and

WHEREAS, the applicant states that, since the time of the most recent grant, the owner acquired former Lot 8900, which was created by the City in 2004 from a mapped, unbuilt street known as West 19<sup>th</sup> Street; and

WHEREAS, the applicant submitted a copy of the "Agreement, Deed of Cession and Grant of Easement" reflecting that former Lot 8900 was conveyed from the City to the owner in 2005; and

WHEREAS, the applicant notes that there is a 17'-6" wide sewer easement running along the west side of former Lot 8900 from Bay 54<sup>th</sup> Street southward to the bulkhead at the edge of Coney Island Creek; and

WHEREAS, the applicant states that the sewer easement prohibits permanent structures of any kind (other than a fence) from being constructed on the easement; and

WHEREAS, the applicant now seeks to enlarge the zoning lot occupied by the scrap metal storage yard to include former Lot 8900, and to legalize the 822.5 sq. ft. enlargement of the existing one-story warehouse building on the site; and

WHEREAS, because an increase in the degree of the existing non-conforming manufacturing use is not permitted in the C8-1 zoning district, the applicant seeks a variance for the site; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the history of use of the site; (2) the existence of the sewer easement along a significant portion of former Lot 8900; and (3) the narrow size and configuration of former Lot 8900; and

WHEREAS, the applicant notes that the scrap metal yard has been located on the site for over 45 years and was the subject of two prior variance applications before the Board, which originally permitted the use to be established in the prior R4 zoning district, and later permitted the enlargement of the non-conforming use on the site; and

WHEREAS, the prior variances granted by the Board found that there were unique conditions on the site which created practical difficulties and unnecessary hardship in developing the site as a conforming use; and

WHEREAS, the applicant states that it now merely seeks to enlarge the existing building by 822.5 sq. ft. and to enlarge the zoning lot by incorporating former Lot 8900 located immediately to the west of the zoning lot, and that otherwise the conditions on the site have not changed since the Board's prior grants; and

WHEREAS, the applicant notes that former Lot 8900 has been historically vacant, as it was created from a portion of the mapped but unbuilt street known as West 19<sup>th</sup> Street; and

WHEREAS, as to the existence of a sewer easement on former Lot 8900, the applicant states that the mapped but unbuilt West 19<sup>th</sup> Street had a width of 80 feet and included a 35-ft. wide sewer easement running down its center; former Lot 8900 was created by the City in 2004 and consists of the eastern half of West 19<sup>th</sup> Street, which includes 17'-6" of the sewer easement; and

WHEREAS, the applicant states that, as noted above, former Lot 8900 was deeded to the subject owner in 2005 and the applicant submitted an "Agreement, Deed of Cession and Grant of Easement," which reflects that no permanent structure of any kind (other than a fence) can be constructed within the easement area; and

WHEREAS, the applicant states that as a result of the easement, the buildable portion of former Lot 8900 has an average width of only 24 feet, which severely limits the viability of the lot for commercial use independent of former Lot 260; and

WHEREAS, specifically, the applicant states that as a result of the easement, any conforming building on former Lot 8900 would be difficult to configure into a functional layout due to the narrow buildable width and significant depth of the site, and could accommodate a building with a floor area of only 4,458 sq. ft.; and

WHEREAS, as to the configuration of the site the applicant states that the only public street frontage provided on former Lot 8900 is the 44-ft. wide span along Bay 54<sup>th</sup> Street, located along the northern lot line of the site; and

WHEREAS, the applicant notes that, due to the easement which occupies nearly half of former Lot 8900, only approximately 26 feet of the frontage along Bay 54<sup>th</sup> Street can be built upon, and therefore the layout of a conforming use at the site would be extremely inefficient, with a 26-ft. wide building entrance leading to a building that could extend to a depth of nearly 200 feet; and

WHEREAS, the applicant states that Bay 54<sup>th</sup> Street is a dead end street with only the existing scrap metal yard and a Home Depot located along the southern side of the street; and

WHEREAS, the applicant further states that former Lot 8900 is set back from the street line of Bay 54<sup>th</sup> Street and the fence of the existing scrap metal facility on former Lot 260 blocks the view of former Lot 8900 from Cropsey Avenue; as a result, a conforming commercial use on former Lot 8900 would have almost no public visibility, which would further inhibit its viability as a conforming use; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) an as-of-right development over the entire 34,527 sq. ft. site, consisting of an 11,306 sq. ft., one-story retail building with accessory parking; and (2) the proposed use of the entire site for the existing scrap metal yard use; and

WHEREAS, the feasibility study concluded that the as-of-right development would not realize a reasonable return, but that the proposed development would realize a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to revise the proposed scenario to include a smaller as-of-right commercial building on former Lot 8900; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed (1) an as-of-right

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scenario consisting of a 2,821 sq. ft. retail building on former Lot 8900 considered in conjunction with the existing scrap metal yard on former Lot 260; and (2) an as-of-right 2,821 sq. ft. retail building on former Lot 8900 considered in isolation from the existing scrap metal yard; and

WHEREAS, the revised feasibility study concluded that neither of the scenarios featuring the smaller retail building on former Lot 8900 would realize a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that, because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized by a mix of commercial, manufacturing, and residential uses; and

WHEREAS, the applicant states that the enlargement of the existing scrap metal yard is imperceptible from Cropsey Avenue and is only visible from the Home Depot site which is immediately adjacent to the west; and

WHEREAS, the applicant further states that the only change that is visible from the adjacent Home Depot site is the location of the fence, which will be relocated 22 feet to the west of its current location, and which will be increased in length from 187 feet to 255 feet; and

WHEREAS, the applicant notes that the increased length of the fence is located entirely at the southern end of the site and will only be noticeable from the southern end of parking lot at the Home Depot site; and

WHEREAS, the applicant states that the enlargement of the existing building is located entirely on the former Lot 260 portion of the site and solely consists of an 822.5 sq. ft. enlargement to the one-story warehouse structure to provide an enclosure that protects the existing electrical framework and generator from the elements; and

WHEREAS, the applicant represents that neither the enlargement to the building nor the enlargement of the zoning lot will result in the use of any additional equipment on the site or the creation of any additional noise, vibrations or other disturbances on the site; and

WHEREAS, the applicant notes that the secluded location of former Lot 8900 will help ensure that the enlargement of the zoning lot will not result in any visual impact on the community; and

WHEREAS, at hearing, the Board directed the applicant to (1) provide an operational plan for the scrap metal yard; (2) remove the graffiti from the site; (3) demonstrate compliance with the condition from the prior grant that scrap piles be kept below the height of the fence; (4) repair the damaged portions of the fencing; and (5) provide landscaping along the western lot line; and

WHEREAS, in response, the applicant submitted an operational plan which states that: (1) the hours of operation will be Monday through Friday, from 7:00 a.m. to 5:00 p.m., Saturday, from 7:00 a.m. to 3:00 p.m., and closed on Sunday; (2) the hours of crane operation will be Monday through Friday, from 8:00 a.m. to 4:30 p.m. and Saturday, from 8:00 a.m. to 3:00 p.m., and the crane will be operated in conformance with Reference Standard RS 19-2; (3) an estimated 30 to 50 trucks travel through the site each day; (4) a rodent control plan certified by a registered New York State exterminator is in effect at the site; (5) all vehicles are parked within the fenced-in portion of the site; (6) all vibrations and sounds emitted from the site comply with M-1 district regulations; (7) all graffiti on the external walls of the site will be promptly painted over; (8) the scrap metal pile will be maintained so as not to exceed the height of the fence; and (9) weekly inspections will be conducted at the site to ensure compliance with the operational plan, specifically with regards to graffiti removal, maintenance of the scrap metal pile, and maintenance of the fence and surrounding sidewalk area; and

WHEREAS, the applicant also submitted photographs reflecting that the existing graffiti has been removed from the site, the scrap metal piles have been reduced so that they do not exceed the height of the fence, and the damaged portions of the fence have been repaired; and

WHEREAS, as to the landscaping on the site, the applicant states that the area along the western lot line where the Board directed the applicant to provide evergreen trees is owned by Home Depot, and not the applicant; and

WHEREAS, the applicant states that it has contacted Home Depot for their approval to provide the proposed plantings, but have not received any response; and

WHEREAS, the applicant submitted an affidavit from the owner stating that it will use its best efforts in pursuing the requested landscaping with Home Depot; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR, Part 617.12 and 617.4; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a



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variance to permit, on a site located in a C8-1 zoning district, the enlargement of the zoning lot for a scrap metal yard (Use Group 18) and the legalization of the enlargement to the existing one-story warehouse building on the site, which does not conform to district use regulations, contrary to ZR § 32-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 12, 2012"- (5) sheets and *on further condition*:

THAT the term of this grant shall expire on June 5, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT the scrap metal piles will be maintained so as not to exceed the height of the fence;

THAT the hours of operation will be Monday through Friday, from 7:00 a.m. to 5:00 p.m., Saturday, from 7:00 a.m. to 3:00 p.m., and closed on Sunday;

THAT the hours of crane operation will be Monday through Friday, from 8:00 a.m. to 4:30 p.m. and Saturday, from 8:00 a.m. to 3:00 p.m.;

THAT the crane will be operated in conformance with Reference Standard RS 19-2;

THAT a rodent control plan certified by a registered New York State exterminator will be kept in effect at the site;

THAT all vehicles will be parked within the fenced-in portion of the site;

THAT all vibrations and sounds emitted from the site comply with M-1 district regulations;

THAT signage shall be as indicated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## 169-11-BZ

### CEQR #12-BSA-038K

APPLICANT – Eric Palatnik, P.C., for Shlomo Vizgan, owner.

SUBJECT – Application October 27, 2011– Special Permit (§73-622) to allow the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R-4 zoning district.

PREMISES AFFECTED – 2257 East 14<sup>th</sup> Street, between Avenue V and Gravesend Neck Road, Block 7375, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 19, 2011, acting on Department of Buildings Application No. 320379602, reads in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141.
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage which is contrary to ZR Section 23-141.
3. Proposed enlargement results in two side yards less than 5 feet and the total of both side yards less than 13 feet, which is contrary to ZR Section 23-461(a).
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 28, 2012, after due notice by publication in *The City Record*, with continued hearings on April 3, 2012 and May 1, 2012, and then to decision on June 5, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 14<sup>th</sup> Street, between Avenue V and Gravesend Neck Road, within an R4 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,098.5 sq. ft. (0.44 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,098.5 sq. ft. (0.44 FAR) to 3,406 sq. ft. (1.36 FAR); the maximum permitted floor area is 2,250 sq. ft. (0.75 FAR); and

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WHEREAS, the applicant proposes to provide an open space of 46.5 percent (55 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 53.5 percent (45 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 3'-10 ¾", and to maintain the existing side yard along the northern lot line with a width of 2'-7 ½" (a minimum width of 5'-0" is required for each side yard, with a minimum total width of 13'-0"); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a survey of 44 homes with FARs greater than 0.8 within 400 feet of the site, of which 36 had FARs exceeding 1.0; and

WHEREAS, the applicant notes that the homes with the greatest FARs in the study area are those located within 100 feet of the site, which includes at least ten homes with FARs ranging from 1.59 to 1.80, all of which are greater than the FAR of the proposed home; and

WHEREAS, at hearing, the Board directed the applicant to remove the dormers from the proposed home, as they are not permitted in the subject R4 zoning district pursuant to ZR § 23-621; and

WHEREAS, in response, the applicant submitted revised plans which removed the dormers from the proposed home; and

WHEREAS, at hearing, the Board also questioned whether the front steps to the porch were permitted to encroach onto the sidewalk, whether the proposed landscaping complied with ZR § 23-451, and whether the proposed accessory off-street parking space is permitted in the front yard; and

WHEREAS, in response, the applicant states that the front steps to the porch are permitted to encroach 18 inches onto City property pursuant to Building Code § 27-31, that the landscaping complies with ZR § 23-451, and that the proposed accessory off-street parking space is permitted in the front yard; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 21, 2012"-(12) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,406 sq. ft. (1.36 FAR); a minimum open space of 46.5 percent; a maximum lot coverage of 53.5 percent; a front yard with a depth of 10'-0"; a side yard with a minimum width of 3'-10¾" along the southern lot line; a side yard with a minimum width of 2'-7½" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB will review and approve compliance with the planting requirements of ZR § 23-451;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2012.

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## 97-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

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## COMMUNITY BOARD #9BX

### APPEARANCES –

For Applicant: Eric Palatnik, Ian Rasmussen and Barbara Cohen.

For Opposition: R. Jamwanot.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.

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## 174-11-BZ

APPLICANT – Daniel H. Braff, Esq., for The Church of Jesus Christ of Latter-day Saints, owner.

SUBJECT – Application November 9, 2011 – Variance (§72-21) to permit the development of a two-story chapel (*The Church of Jesus Christ of Latter-day Saints*), contrary to floor area ratio (§24-111) and permitted obstructions in the side yards and rear yard (§24-33). R2A zoning district. PREMISES AFFECTED – 145-15 33<sup>rd</sup> Avenue, north side of 33<sup>rd</sup> Avenue approximately 400' east of Parsons Boulevard, Block 4789, Lot 81, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Daniel Braff.

For Opposition: Bessie Schachter for Senator Tony Avella, Dominic Ponakal for Assembly Member Rory Lancman, Charles Apelian for CB 7, Tyler Cassell, Peter J. Brancazio, Janet McCreesh, Paul Graziano, Janet McEneaney, Phil Konigsberg, Mike Mullew.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for decision, hearing closed.

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## 187-11-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for Sandford Realty, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

### APPEARANCES –

For Applicant: Ron Mandel and Jack Freeman.

For Administration: Anthony Scaduto, Fire Department.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

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## 193-11-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); less than the minimum side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Eric Palatnik, Isaa Schwartz and Ian Rasmussen.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

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## 7-12-BZ

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

## COMMUNITY BOARD #4BK

### APPEARANCES –

For Applicant: Eric Palatnik and Kenneth Sutin.

For Opposition: Arthur Little and Jann Leeming.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

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## 23-12-BZ

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

### APPEARANCES –

For Applicant: Emily Simons.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for continued hearing.

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## 30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an

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existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: George Wang.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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## 40-12-BZ

APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.

SUBJECT – Application February 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Global Health Clubs*). C2-1 zoning district.

PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for decision, hearing closed.

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## 42-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 158 West 27<sup>th</sup> Street, LLC, owner; 158 West 27<sup>th</sup> Fitness Group, LLC, lessee.

SUBJECT – Application February 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 zoning district.

PREMISES AFFECTED – 158 West 27<sup>th</sup> Street, located on the south side of 27<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 19, 2012, at 1:30 P.M., for decision, hearing closed.

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## 64-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16302 Jamaica LLC, owner; Blink Jamaica Avenue, Inc., lessee.

SUBJECT – Application March 20, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*) within portions of an existing building. C6-3(DP) zoning district.

PREMISES AFFECTED – 163-02 Jamaica Avenue, southeast corner of intersection of Jamaica and Guy R. Brewer Boulevard, block 10151, Lot 1, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

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## 68-12-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90<sup>th</sup> Street, Block 9093, Lot 13, Borough of Queens.

## COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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## \*CORRECTION

This resolution adopted on April 24, 2012, under Calendar No. 764-56-BZ and printed in Volume 97, Bulletin Nos. 16-18, is hereby corrected to read as follows:

### 764-56-BZ

APPLICANT – Alfonso Duarte, P.E., for Anthony Panvini, owner.

SUBJECT – Application December 2, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses and the sale of used cars (UG 16B), which expires on October 22, 2012. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, north side between Hollis Ct., Boulevard and 201<sup>st</sup> Street, Block 741, Lot 325,000.00, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted variance to permit the operation of a gasoline service station with accessory uses and the sale of cars, which will expire on October 22, 2012; and

WHEREAS, a public hearing was held on this application on February 14, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) there be no parking on the sidewalk; (2) the site be maintained free of debris and graffiti; (3) all graffiti be removed within 48 hours; (4) all signs be maintained in accordance with the BSA-approved plans; (5) the sale of only five used cars be permitted; (6) all conditions appear on the certificate of occupancy; and (7) a new certificate of occupancy be obtained within one year from the date of the grant; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, subject to the conditions stipulated by the Community Board; and

WHEREAS, the subject site is located on a corner through lot bounded by 201<sup>st</sup> Street to the east, the Horace Harding Expressway to the south, and Hollis Court Boulevard to the west, within a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 17, 2002, the Board granted a ten-year extension of term, which expires on October 22, 2012, and an amendment to permit the sale of used cars; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the site's compliance with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted revised plans and a signage analysis reflecting that the site complies with C1 district signage regulations; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated October 22, 1957, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 22, 2012, to expire on October 22, 2022; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received January 31, 2012’- (2) sheets and ‘April 2, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on October 22, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT any graffiti identified on the site will be removed within 48 hours;

THAT all signage on the site will comply with C1 district regulations;

THAT a maximum of five parking spaces on the site be utilized for the sale of used cars;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by April 24, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals April 24, 2012.

**\*The resolution has been revised to correct the Plans**

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# MINUTES

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date, which read: ... 'April 3, 2012'-(1) sheet. now reads:  
... 'April 2, 2012'-(1) sheet. Corrected in Bulletin Nos. 22-  
24, Vol. 97, dated June 14, 2012.

## \*CORRECTION

This resolution adopted on May 8, 2012, under Calendar No. 203-07-BZ and printed in Volume 97, Bulletin No. 20, is hereby corrected to read as follows:

### 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.  
SUBJECT – Application December 30, 2011 – Amendment to a previous variance (§72-21) which allowed for the construction of a mixed use building, contrary to floor area an open space regulations. The amendment requests changes to the interior layout which would decrease medical office space, increase the number of dwelling units from 28 to 36, and increase parking from 58 to 61 spaces. R6/C2-2 zoning district.

PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a 12-story mixed-use commercial/community facility/residential building; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1) the owner ensures that the existing underground oil/gas tanks are legally removed and the soil is remediated; and (2) the parking plan be reviewed for compliance with zoning, height, and width; and

WHEREAS, the site is located on the northeast corner of Main Street and Elder Avenue; and

WHEREAS, the site is partially within an R6 zoning district and partially within an R6/C2-2 zoning district and has a total lot area of 9,632 sq. ft.; and

WHEREAS, on August 25, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a 12-story mixed-use commercial/community facility/residential building which did not comply with the underlying zoning regulations for

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# MINUTES

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floor area ratio ("FAR") and open space, contrary to ZR § 23-142; and

WHEREAS, the applicant now requests an amendment to permit changes to the interior layout of the proposed building, including an increase in the number of dwelling units and parking spaces, an increase in the commercial floor area, a decrease in the community facility floor area, and modifications to the floor-to-ceiling heights that result in a slight increase in the building height; and

WHEREAS, specifically, the applicant seeks to increase the number of dwelling units from 26 units to 36 units and to provide a corresponding increase in the number of accessory parking spaces, from 58 spaces to 61 spaces; and

WHEREAS, the applicant states that the additional ten dwelling units are created by rearranging the interior layout on the fourth through tenth floors to create four dwelling units on each floor instead of three, and converting the two approved 11<sup>th</sup> and 12<sup>th</sup> floor duplexes into four single-floor units; the proposed residential floor area remains the same as the floor area approved by the Board pursuant to the original variance (33,292 sq. ft.); and

WHEREAS, the applicant further states that the additional number of parking spaces required by the proposed increase in dwelling units will be accommodated by installing stackers in the cellar and second floor parking garages; and

WHEREAS, the applicant notes that the proposed 61 parking spaces includes the required 55 parking spaces and six required queuing spaces; and

WHEREAS, the applicant states that the floor-to-ceiling heights of the cellar, first, and second floors have been adjusted to accommodate the stackers (which require overhead clearance of 10'-0"), resulting in a 1'-0" increase in the total building height, from 137'-6" to 138'-6"; and

WHEREAS, the applicant notes that the proposed height remains within the building envelope that is permitted as-of-right; and

WHEREAS, the applicant also seeks a slight increase in the commercial floor area on the ground floor from 6,820 sq. ft. to 7,040 sq. ft., due to a redesigned elevator core which was relocated to reduce the distance from the street entrance to the elevators, and a slight decrease in the community facility floor area from 4,850 sq. ft. to 4,149 sq. ft., due to the enlargement of the second floor parking garage to accommodate the additional parking spaces; and

WHEREAS, the applicant states that the proposed amendments will not adversely affect the surrounding neighborhood, as only ten additional dwelling units are proposed and required parking will be provided within the building; and

WHEREAS, the applicant further states that no increase in the approved residential floor area or decrease in the approved residential open space is requested; and

WHEREAS, in response to the Community Board's concerns regarding environmental remediation, the applicant states that its environmental consultant is working with the New York State Department of Environmental Conservation

("DEC") to determine the extent and scope of work necessary to remediate the soil at the site, that DEC requested the submission of a Remedial Action Work Plan ("RAWP"), and that upon approval of the RAWP it will undertake the necessary soil remediation measures simultaneously with the commencement of construction at the site; and

WHEREAS, as to the Community Board's concerns regarding the proposed parking plan, the applicant submitted revised plans which reflect the proposed parking stackers at the second and cellar floors, and the adjusted floor-to-ceiling heights of the cellar, first, and second floors to accommodate the stackers; and

WHEREAS, the Board notes that the proposed parking plan is subject to DOB review and approval for compliance with the Zoning Resolution and Building Code, and any other applicable requirements; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 25, 2009, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 26, 2012"- eleven (11) sheets; and *on further condition*:

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 402635403)

Adopted by the Board of Standards and Appeals May 8, 2012.

**\*The resolution has been revised to correct part of the SUBJECT which read: ... "dwelling units from 28 to 36..." now reads: ... "dwelling units from 26 to 36", to remove the 7<sup>th</sup> WHEREAS; and the part of the building height which read: "from 137'-11" to 138'-11"... now reads: "from 137'-6" to 138'-6". Corrected in Bulletin Nos. 22-24, Vol. 97, dated June 14, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, No. 25

June 20, 2012

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**167-12-A**

101-07 Macombs Place, northwest corner of Macombs Place and West 154th Street, Block 2040, Lot(s) 23, Borough of **Manhattan, Community Board: 10**. Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign, pursuant to Z.R.§52-731. R7-2 district.  
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**168-12-A**

2432 Grand Concourse, east side of Grand Concourse between East 187th Street and East 188th Street, Block 3152, Lot(s) 60, Borough of **Bronx, Community Board: 5**. Appeal from Department of Buildings' determination that sign is not entitled to non-conforming use status as an advertising sign. R8 and C4-4 district.  
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**169-12-A**

24-28 Market Street, southeast intersection of Market Street and Henry Street, Block 275, Lot(s) 20, Borough of **Manhattan, Community Board: 3**. Appeal from Department of Buildings' determination that signs are not entitled to continued non-conforming use status as advertising signs, pursuant to Z.R.§52-731. R7-2 district.  
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**170-12-A**

24-28 Market Street, southeast intersection of Market Street and Henry Street, Block 275, Lot(s) 20, Borough of **Manhattan, Community Board: 3**. Appeal from Department of Buildings' determination that signs are not entitled to continued non-conforming use status as advertising signs, pursuant to Z.R.§52-731. R7-2 district.  
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**171-12-A**

Cross Bronx Expressway E/O Sheridan, , Block 0, Lot(s) 0, Borough of **Bronx, Community Board: 09**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1 district.  
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**172-12-A**

Cross Bronx Expressway & Bronx River, , Block 3904, Lot(s) 1, Borough of **Bronx, Community Board: 06**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C8-1 district.  
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**173-12-A**

Cross Bronx Expressway E/O Bronx River & Sheridan, , Block 3904, Lot(s) 1, Borough of **Bronx, Community Board: 06**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C8-1 district.  
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**174-12-A**

I-95 & Hutchinson Parkway, , Block 4411, Lot(s) 1, Borough of **Bronx, Community Board: 11**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3-2 district.  
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**175-12-A**

I-95 & Hutchinson Parkway, , Block 4411, Lot(s) 1, Borough of **Bronx, Community Board: 11**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3-2 district.  
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**176-12-A**

Bruckner Boulevard & Hunts Point Avenue, , Block 2734, Lot(s) 30, Borough of **Bronx, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 (HP) district.  
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**177-12-A**

Bruckner Boulevard & Hunts Point Avenue, , Block 2734, Lot(s) 30, Borough of **Bronx, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 (HP) district.  
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**178-12-A**

Bruckner Expressway N/O 156th Street, Block 2730, Lot(s) 101, Borough of **Bronx, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 district.  
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# DOCKET

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## 179-12-A

Bruckner Expressway N/O 156th Street, Block 2730, Lot(s) 101, Borough of **Bronx, Community Board: 02**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 (HP SD) district.

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## 180-12-A

Major Deegan Expressway S/O Van Cortland, Block 3269, Lot(s) 70, Borough of **Bronx, Community Board: 08**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 district.

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## 181-12-A

511 Canal Street, Greenwich Street and Hudson Street, Block 594, Lot(s) 8, Borough of **Manhattan, Community Board: 2**. Appeal of Sign Registration Rejection dated May 9, 2012 by the Department of Buildings. C6-2A district.

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## 182-12-A

Major Deegan Expressway and 161st Street, located on MTA Railroad Property, Block , Lot(s) , Borough of **Bronx, Community Board: 4**. Appeal from Department of Buildings' determination that sign is not entitled to legal status as advertising sing. district.

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## 183-12-A

476 Exterior Street, E. 149 St, to North Major Deegan Expressway to East, Harlem River to West, Block 02349, Lot(s) 0112, Borough of **Bronx, Community Board: 1**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 district.

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## 184-12-A

477 Exterior street, e149th Street to North, Major Deegan Expressway to East, Harlem River to West, Block 02349, Lot(s) 0112, Borough of **Bronx, Community Board: 1**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 district.

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## 185-12-A

475 Exterior street, E. 149th Street to North, Major Deegan Expressway to East; Harlem River to West, Block 02349, Lot(s) 0112, Borough of **Bronx, Community Board: 1**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 district.

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## 186-12-A

Major Deegan, Block , Lot(s) , Borough of **Bronx, Community Board: .** Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 district.

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## 187-12-A

Major Deegan, , Block , Lot(s) , Borough of **Bronx, Community Board: .** Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 district.

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## 188-12-A

Major Deegan, Block , Lot(s) , Borough of **Bronx, Community Board: .** Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 district.

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## 189-12-BZ

98 Montague Street, East side of Hicks Street between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets., Block 248, Lot(s) 15, Borough of **Brooklyn, Community Board: 2**. Variance to permit a transient hotel (Use Group 5), contrary to use regulations. C1-3/R7-1, R6 zoning districts. C1-3/R7-1, R6 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JULY 10, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 10, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**365-79-BZ**

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for 89-52 Queens LLC, owner.  
SUBJECT – Application February 21, 2012 – Amendment to a prior variance which allowed for a hospital to be built contrary to bulk regulations. The hospital is now proposed to be used for commercial, community facility and residential uses. R6B/C1-2 zoning district.  
PREMISES AFFECTED – 90-02 Queens Boulevard, Hoffman Drive and Queens Boulevard, block 2857, Lot 36, Borough of Queens.  
**COMMUNITY BOARD #4Q**

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**25-89-BZ**

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for St. John's Garage LLC, owner.  
SUBJECT – Application February 23, 2012 – Amendment to prior variance which allowed for an accessory parking garage to be built for a hospital to be used for accessory parking for community facility, commercial and residential uses which will now occupy that former hospital. R6B/C1-2 zoning district.  
PREMISES AFFECTED – 58-04 Hoffman Drive, 58<sup>th</sup> Avenue and Hoffman Drive, Block 2860, Lot 16, Borough of Queens.  
**COMMUNITY BOARD #4Q**

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**337-90-BZ**

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.  
SUBJECT – Application April 26, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2) which will expire on June 2, 2012. C1-3/R5D zoning district.  
PREMISES AFFECTED – 1415-17 East 92<sup>nd</sup> Street, northeast corner of the intersection formed by East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.  
**COMMUNITY BOARD #18BK**

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**51-06-BZ**

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.  
SUBJECT – Application February 4, 2010 – Amendment of variance (§72-21) which permitted, in a C1-2/R2 zoning district, the operation of a Physical Culture Establishment (PCE) contrary to ZR §32-00, and the legalization of an existing dance studio (Use Group 9), contrary to ZR §32-18.  
The amendment seeks to enlarge the PCE to occupy 1,072 sf of the first floor and amend the resolution to reflect a change in ownership of the PCE.  
PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188th and 189th Streets, Block 7266, Lot 1, Borough of Queens.  
**COMMUNITY BOARD #1Q**

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**APPEALS CALENDAR**

**17-12-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Richard and Michelle Kourbage, owners.  
SUBJECT – Application January 24, 2012 – Proposed building not fronting a mapped street contrary to Art 3 Sect. 36 GCL and Sect 27-291 Admin. Code of City of New York. The building is in the bed of a mapped street contrary to Art. 3 Sect 35 of the General City Law. Private disposal system in the bed of a mapped street contrary to D.O.B. policy. R4 zoning district.  
PREMISES AFFECTED – 409 Seabreeze Walk, north side of Seabreeze Walk, Block 16350, Lot 400, Borough of Queens.  
**COMMUNITY BOARD #14Q**

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**18-12-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Dennis Dorizas, lessee.  
SUBJECT – Application January 24, 2012 – Proposed building and site not fronting a mapped street contrary to Art. 3 Sect. 36 GCL and Sect. C27-291 of Admin. Code. R4 Zoning District.  
PREMISES AFFECTED – 377 Bayside Avenue, Block 16340, Lot 50, Borough of Queens.  
**COMMUNITY BOARD #14Q**

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# CALENDAR

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**JULY 10, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 10, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **147-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011– Variance (§72-21) to permit the construction of a single-family semi-detached residence on a vacant lot contrary to floor area (23-141) and side yard (23-461). R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

**COMMUNITY BOARD #3Q**

-----

### **16-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for school to be located within a M1-2 zoning district, contrary to §42-00. M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

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### **80-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts.

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

**COMMUNITY BOARD #4BK**

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### **104-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance permitting accessory retail parking on the R5 portion of a zoning lot that is split by district boundaries which expired on May 20, 2000; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the

Board's Rules of Practice and Procedure. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

**COMMUNITY BOARD #8Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 12, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

-----  
**SPECIAL ORDER CALENDAR**

**196-49-BZ**

APPLICANT – Walter T. Gorman, P.E., for 1280 Allerton Avenue Realty Corp., owner; Don-Glo Auto Service Center, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of an approved variance for the continued operation of a gasoline service station (*Sunoco*) which expired on September 30, 2005; Amendment for the addition of a lift in the service building and an air tower and car vacuum on the site. R4 zoning district.

PREMISES AFFECTED – 1280 Allerton Avenue, south west corner of Wilson Avenue. Block 4468, Lot 43. Borough of Bronx.

**COMMUNITY BOARD #11BX**

APPEARANCES –

For Applicant: Chetram Budhu.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term, and an amendment to a previously granted variance for a gasoline service station; and

WHEREAS, a public hearing was held on this application on April 24, 2012 after due notice by publication in *The City Record*, with a continued hearing on May 15, 2012, and then to decision on June 12, 2012; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on a corner through lot bounded by Bouck Avenue to the west, Allerton Avenue to the north, and Wilson Avenue to the east, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 11, 1950 when, under the subject calendar number, the Board granted a variance to permit the

site to be occupied by a gasoline service station for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 22, 1998, the Board granted an extension of term for a period of ten years, which expired on September 30, 2005; and

WHEREAS, the applicant now seeks an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also requests an amendment to the previous grant to reflect the addition of a third automobile lift in the service building, the addition of an air tower and car vacuum tower at the northwest corner of the site, and an increase in the hours of operation for gasoline sales; and

WHEREAS, as to the hours of operation, the applicant states that the previously-approved hours of operation are 6:00 a.m. to 12:00 a.m., daily, for the gasoline service station, and Monday through Saturday, from 8:00 a.m. to 5:00 p.m., and Sunday, from 10:00 a.m. to 3:00 p.m. for the auto repair shop; and

WHEREAS, the applicant proposes to increase the hours of operation for the gasoline service station to 24 hours, daily, and to change the hours of operation for the auto repair shop to Monday through Saturday, from 8:00 a.m. to 5:00 p.m., and closed on Sunday; and

WHEREAS, the applicant states that permitting the subject gasoline service station to operate on a 24-hour basis will enable it to compete with the many existing gasoline service stations within the City that operate on a 24-hour basis; and

WHEREAS, at hearing, the Board raised concerns about an open Fire Department violation for failure to have certificates of fitness for dispensing gasoline and failure to display an annual fire permit; and

WHEREAS, in response, the applicant submitted copies of the certificates of fitness for individuals who dispense gasoline at the station, and submitted a copy of the annual fire permit which is displayed at the station; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 11, 1950, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 30, 2005, and to permit the noted modifications to the previously-approved plans; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received February 14, 2012’-(6) sheets; and *on further condition*:

THAT the term of the grant will expire on September 30, 2015;

THAT the hours of operation for the gasoline service

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station will be 24 hours, daily;

THAT the hours of operation for the auto repair shop will be Monday through Saturday, from 8:00 a.m. to 5:00 p.m., and closed on Sunday;

THAT the above conditions will be reflected on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by June 12, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 220166120)

Adopted by the Board of Standards and Appeals June 12, 2012.

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## 849-49-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, Esq., for Directors of Guild of America, Inc., owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued use of a motion picture theater which expired on January 31, 2012. C5-3(MID) zoning district.

PREMISES AFFECTED – 110 West 57<sup>th</sup> Street, southside of 57<sup>th</sup> Street, between 6<sup>th</sup> and 7<sup>th</sup> Avenues, Block 1009, Lot 40, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Randall Minor.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for the operation of a motion picture theater (Use Group 8) at the site; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of West 57<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, within a C5-3 zoning district; and

WHEREAS, the site is occupied by a seven-story

commercial building with a 4,110 sq. ft. portion of the first floor operated as a motion picture theater (Use Group 8); and

WHEREAS, the Board has exercised jurisdiction over the site since March 28, 1950 when, under the subject calendar number, the Board granted a variance to permit the use of a portion of the first floor as a motion picture theater (Use Group 8), for a term of 21 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 30, 2003, the Board granted a ten-year extension of term, which expired on January 31, 2012; and

WHEREAS, the applicant now seeks an additional ten-year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 28, 1950, so that as amended this portion of the resolution shall read: “to extend the term for ten years from January 31, 2012, to expire on January 31, 2022; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of the grant will expire on January 31, 2022;

THAT all conditions from prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB App. No. 103455976)

Adopted by the Board of Standards and Appeals June 12, 2012.

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## 749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application April 9, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) which expired on March 8, 2012.

PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Emily Laskodi.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

# MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on March 8, 2012; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Richmond Road and Stobe Avenue, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 3, 1965 when, under the subject calendar number, the Board granted a variance to permit the reconstruction and rehabilitation of an automotive service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on March 8, 2011, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on November 3, 2020, and an extension of time to obtain a certificate of occupancy, which expired on March 8, 2012; and

WHEREAS, the applicant now requests an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained by the stipulated date due to delays at the Department of Buildings; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated November 3, 1965, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to June 12, 2013; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a new certificate of occupancy will be obtained by June 12, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)

and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 520045816)

Adopted by the Board of Standards and Appeals June 12, 2012.

## 136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corp., owner.

SUBJECT – Application April 20, 2012 – Extension of Time to complete Construction and obtain a Certificate of Occupancy for a previously granted Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on March 21, 2012. M1-4/R-7A zoning district.

PREMISES AFFECTED – 11-11 44<sup>th</sup> Drive, north side of 44<sup>th</sup> Drive between 11<sup>th</sup> Street and 21<sup>st</sup> Street, Block 447, Lot 13, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction and obtain a certificate of occupancy for a previously granted variance; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located on the north side of 44<sup>th</sup> Drive, between 11<sup>th</sup> Street and 21<sup>st</sup> Street, within an M1-4 (R7A) zoning district; and

WHEREAS, on June 11, 2002, the Board granted an application under ZR § 72-21, to permit, in an M1-4 zoning district, an increase in floor area for a wholesale office with accessory storage (Use Group 10) and the legalization of the existing encroachment into the rear yard; and

WHEREAS, substantial construction was to be completed by June 11, 2006 in accordance with ZR § 72-23; and

WHEREAS, on March 28, 2006, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 28, 2008; and

WHEREAS, on January 12, 2010, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, which expired on July 12, 2010, and an amendment to the approved plans to reflect that the previously-approved enlargement had been eliminated and that the total floor area of the proposed building will remain at



# MINUTES

31,784 sq. ft.; and

WHEREAS, most recently, on September 21, 2010, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 21, 2012; and

WHEREAS, the applicant now requests an additional extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that since the Board's prior grant of an extension of time the owner has made substantial expenditures toward completing the project, totaling \$427,359.04, which included substantial improvements to the structure, mechanical systems, fireproofing and sprinklering, and interior of the building; and

WHEREAS, in support of the work performed on the site since the prior grant, the applicant submitted expense reports reflecting the expenditures made on construction, and photographs of the work completed on the site; and

WHEREAS, the applicant states that approximately 90 percent of the work is complete at the site, and requests a one-year extension of time to complete construction, consisting of minor interior carpentry, painting, and carpeting, and to obtain a certificate of occupancy; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated June 11, 2002, so that as amended this portion of the resolution shall read: "to permit an extension of time to complete construction and obtain a certificate of occupancy, to expire on June 12, 2013; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT substantial construction will be completed and a certificate of occupancy obtained by June 12, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 400849748)

Adopted by the Board of Standards and Appeals, June 12, 2012.

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## 292-55-BZ

APPLICANT – Alfonso Duarte, for Narkeet Property Inc., owner.

SUBJECT – Application April 2, 2012 – Extension of Term (§11-411) for the continued operation of a Automotive Service Station (GULF) which expired on April 10, 2011; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 239-15 Jamaica Avenue, northwest corner of 240<sup>th</sup> Street, Block 8001, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for continued hearing.

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## 534-65-BZ

APPLICATION – Alfonso Duarte for Parker Yellowstone, owner.

SUBJECT – Application March 9, 2012 – Extension of Term permitting surplus tenant parking spaces, within an accessory garage, for transient parking pursuant to §60 (3) of the Multiple Dwelling Law, which expired on July 13, 2010; waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 104-40 Queens Boulevard, northeast corner Yellowstone Boulevard. Block 3175, Lot 1. Borough of Queens.

## COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for decision, hearing closed.

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## 313-77-BZ

APPLICANT – Goldman Harris LLC, for Gilsey House, owner.

SUBJECT – Application April 13, 2012 – Amendment to a variance (§72-21) which allowed the conversion of a manufacturing building to residential use. The proposal is to construct a one-story penthouse and roof deck enlargement within the approved envelope. M1-6 zoning district.

PREMISES AFFECTED – 1200 Broadway, southeast corner of West 29<sup>th</sup> Street and Broadway, Block 831, Lot 20, Borough of Manhattan.

## COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Vivien R. Krieger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

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## 12-91-BZ

APPLICANT – Rampulla Associates Architects, for Miggy’s Too Delicatessen Corp., owner.

SUBJECT – Application March 12, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 food store (*Bayer’s Market*) which expired on April 21, 2012; Amendment to eliminate landscaping, legalize an outdoor refrigeration unit, eliminate hours for garbage pickup, and request to eliminate the term of the variance. R3-2 zoning district.

PREMISES AFFECTED – 2241 Victory Boulevard, north south corner of Victory Boulevard and O’Connor Avenue, Block 463, Lot 25, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for decision, hearing closed.

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## 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee.

SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy of a special permit (§73-63) for the operation of a physical culture establishment (*Crunch Fitness*) which expired on April 24, 2011; Waiver of the Rules. R7A (C2-4) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and St. Felix Street, Block 2096, Lot 66, 69, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for decision, hearing closed.

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## 339-04-BZ

APPLICATION – Eric Palatnik, P.C., for Kramer and Wurtz, Inc., owner.

SUBJECT – Application January 17, 2012 – Extension of Term (§11-411) of a previously granted variance which permits an automotive service station (UG 16B) which expires on June 4, 2012. R3-1 zoning district.

PREMISES AFFECTED – 157-30 Willets Point Boulevard, south side of the intersection formed by Willets Point Boulevard and Clintonville Street. Block 4860, Lot 15.

Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 99-11-A

APPLICANT – Eric Palatnik, P.C., for Naila Aatif, owner.

SUBJECT – Application July 8, 2011 – Legalization of changes to a two-family residence which does not front upon a legally mapped street, contrary to General City Law Section 36. R6 Zoning District

PREMISES AFFECTED – 16 Brighton 7<sup>th</sup> Walk, between Brighton 7<sup>th</sup> Street and Brighton 8<sup>th</sup> Street. Block 8667, Lot 774, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, June 12, 2012.

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### 196-11-A

APPLICANT – Bryan Cave, LLP, for Jamaica Estates Design Group LLC, owner.

SUBJECT – Application December 27, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district regulations. R4-1 zoning district.

PREMISES AFFECTED – 178-06 90<sup>th</sup> Avenue, southeast corner of the intersection of 90<sup>th</sup> Avenue and 178<sup>th</sup> Street, Block 9894, Lot 47, 48, 51, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Frank Chaney.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

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WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-story community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the site is located on the southeast corner of 90<sup>th</sup> Avenue and 178<sup>th</sup> Street; and

WHEREAS, the site consists of an L-shaped parcel with approximately 90 feet of frontage on 90<sup>th</sup> Avenue, 77 feet of frontage on 178<sup>th</sup> Street, and a total lot area of 8,450 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story community facility building with a floor area of 38,468 sq. ft. (4.55 FAR) (the "Building"); and

WHEREAS, the subject site is currently located in an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters, specifically with respect to floor area; and

WHEREAS, however, on September 10, 2007 (the "Rezoning Date"), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site to an R4-1 zoning district, as noted above; and

WHEREAS, the Building does not comply with the R4-1 zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that Permit No. 402601500 was issued on June 26, 2007 (the "Foundation Permit"), and New Building Permit No. 402629312 was issued on August 20, 2007 authorizing the development of a nine-story mixed-use residential/community facility building with 16 dwelling units and a total of 26,609 sq. ft. of floor area (the "Original Building"), which was permitted as-of-right under the R6 zoning district; and

WHEREAS, the Board notes that, as of the Rezoning Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained

within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on September 10, 2009, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, the applicant states that on September 10, 2009, DOB approved an amendment to the plans for the Original Building under a Post-Approval Amendment ("PAA") and issued a new building permit to allow the construction of the Building, which was also permitted as-of-right under the R6 zoning district; and

WHEREAS, the applicant further states that all construction work performed pursuant to the permit for the Original Building can be applied toward the Building; and

WHEREAS, the applicant notes that the Building primarily consists of faculty apartments and offices to be occupied by Queens College; and

WHEREAS, by letter dated January 11, 2012, DOB states that the Permit was lawfully issued, authorizing construction prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

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WHEREAS, the applicant states that, as of the two year anniversary of the Rezoning Date the owner had completed all excavation and foundation work, all waterproofing of the foundation walls, and had begun construction of the concrete block walls on top of the foundation walls; and

WHEREAS, the applicant represents that the work completed at the site as of the two year anniversary of the Rezoning Date accounts for approximately 15 percent of the total construction work; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: construction contracts, a construction log, concrete pour tickets, and photographs of the site showing the amount of work completed prior to the two year anniversary of the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the two year anniversary of the Rezoning Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that the owner expended \$2,758,239, including hard and soft costs and irrevocable commitments, out of \$11,616,685 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$1,224,137 for the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, the applicant further states that the owner paid an additional \$1,534,102 in soft costs related to the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, thus, the expenditures up to the two year anniversary of the Rezoning Date represent approximately 24 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could

not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if it is required to comply with the R4-1 zoning district regulations, the floor area of the Building would have to be decreased from the proposed 38,468 sq. ft. (4.55 FAR) to a maximum of 16,900 sq. ft. (2.0 FAR); and

WHEREAS, the applicant further states that an R4-1 compliant community facility building would not be feasible because it would not suit the programmatic needs of Queens College, which would likely withdraw from the project as a result; and

WHEREAS, the applicant represents that an R4-1 compliant mixed-use building with approximately 8,000 sq. ft. of ground floor community facility use and a maximum of 7,605 sq. ft. of residential floor area would be even less feasible than a complying community facility building; and

WHEREAS, accordingly, the applicant states that the only potentially feasible development under the R4-1 district regulations would be a residential building; however, constructing a residential building on the site would require the complete redesign of the Building; and

WHEREAS, specifically, the applicant states that the existing foundation, which is built to the lot lines, is far too large for a complying residential building and would have to be substantially or even completely demolished and rebuilt in order to provide the necessary front, side, and rear yards for a complying residential building, resulting in the loss of all of the hard and soft costs associated with the construction and maintenance of the foundation on the property, a total of \$2,758,239; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the loss of expenditures and outstanding fees that could not be recouped and the need to demolish and redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Alteration Permit No. 402629312-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 12, 2012.

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# MINUTES

## 15-12-A & 158-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 29-01 Borden Realty Co., LLC, owner; Van Wagner Communications, LLC, lessee.

SUBJECT – Application January 23, 2012 – Appeal challenging the Department of Buildings’ determination that outdoor accessory signs and structures are not a legal non-conforming accessory use pursuant to §52-00. M3-1 zoning district.

PREMISES AFFECTED – 29-01 Borden Avenue, bounded by Newton Creek, Borden Avenue, Hunters Point Avenue and 30<sup>th</sup> Avenue, Block 292, Lot 1, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, June 12, 2012.

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## 52-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Michael Mullaly, lessee.

SUBJECT – Application March 7, 2012 – Proposed reconstruction of an existing building located in the bed of a mapped street, contrary to Section 35 of the General City Law, not fronting a mapped street, contrary to Section 36 of General City Law and contrary to the Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 35 Janet Lane, north of Janet Lane, east of Beach 203<sup>rd</sup> Street, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 1, 2012, acting on Department of Buildings Application No. 420344693, reads in pertinent part:

- A1- The proposed enlargement is on a site where the building and lot are partially located in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law
- A2- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law; and
- b) Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A3- The proposed upgrade of the private disposal system is contrary to the Department of Building policy; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in the *City Record*, with a continued hearing on June 12, 2012, and then to decision on the same date; and

WHEREAS, by letter dated April 26, 2012 the Fire Department states that it has no objection to the subject proposal, and due to the fact that the proposed enlargement is less than 125 percent of the existing floor area, no Fire Code regulations are triggered; and

WHEREAS, by letter dated March 21, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated March 28, 2012, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated March 1, 2012, acting on Department of Buildings Application No. 420344693, is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 7, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June

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12, 2012.

Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for decision, hearing closed.

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**125-11-A**

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Application: Peter Geis.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for deferred decision.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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**162-11-A**

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Calvin Wong

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for adjourned hearing.

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**24-12-A & 147-12-A**

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 12<sup>th</sup> Avenue Realty Holding Corp., owner; Mizey Realty Co., Inc., lessee.

SUBJECT – Application February 2, 2012 and May 8, 2012 – Appeal challenging the Department of Buildings’ determination that outdoor accessory signs and structures are not a legal non-conforming use pursuant to §52-00. M1-2 zoning district.

PREMISES AFFECTED – 2368 12<sup>th</sup> Avenue, bounded by Henry Hudson Parkway, West 134<sup>th</sup> Street, 12<sup>th</sup> Avenue and 135<sup>th</sup> Street, Block 2005, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #9M**

APPEARANCES –

For Applicant: Richard G. Leland.

For Opposition: John Egnatios Beene.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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**REGULAR MEETING  
TUESDAY AFTERNOON, JUNE 12, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**129-11-BZ**

**CEQR #12-BSA-019K**

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3<sup>rd</sup> Avenue. Block 447, Lot 43. Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

APPEARANCES –

For Applicant: Jeffrey Chester.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 4, 2011, acting on Department of Buildings Application No. 320206031, reads in pertinent part:

Residence (UG 2) is not permitted as of right use in a M1-2 district as per Section 42-00 of the Zoning Resolution and, as such must be referred to the Board of Standards and Appeals for approval; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, the construction of a four-story residential building, which is contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on January 24, 2012 after due notice by publication in the *City Record*, with a continued hearing on February 28, 2012, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Carroll Street between Nevins Street and Third Avenue; and

WHEREAS, the site is an irregularly-shaped lot with 24'-

0" of frontage along Carroll Street, with a 12'-6" bump out along the rear 25'-0" of the lot (for a total width of 36'-6" at the rear of the lot), a depth of 100 feet, and a total lot area of 2,712.5 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story, four-unit residential building with a floor area of 5,421 sq. ft. (2.0 FAR) and a height of 40 feet; and

WHEREAS, because residential use is not permitted in the M1-2 zoning district, the subject variance is requested; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with applicable regulations: (1) the site is narrow and irregularly-shaped; and (2) the site is located on a narrow street among residential uses; and

WHEREAS, as to the size and shape of the lot, the applicant states that the lot has a narrow width of 24'-0", with a 12'-6" bump out along the rear 25'-0" of the lot; and

WHEREAS, the applicant represents that the narrow width of the site would result in a conforming commercial or manufacturing building with extremely narrow floor plates, which would impede the flow of work and material for such a use; and

WHEREAS, as to the location of the site, the applicant states that Carroll Street is a narrow, one-lane, one-way street with parking spaces along both sides of the street, and the subject block is occupied primarily by residential use; and

WHEREAS, the applicant states that due to the layout of the street, there could be no meaningful driveway or loading dock located on the subject site and it would be difficult to impossible for tractor-trailers or large commercial trucks to make deliveries or pickups at the site; and

WHEREAS, the applicant further states that the narrow width of the site also contributes to the inability to provide a viable loading dock on the site to support a conforming use; and

WHEREAS, accordingly, the applicant represents that a conforming commercial or manufacturing building would not be viable on the subject site; and

WHEREAS, as to the uniqueness of the conditions, the applicant performed a lot use and width analysis that evaluated the 443 lots bounded by Sackett Street, Fourth Avenue, Bond Street, and Third Street, which is almost equivalent to the area in the Department of City Planning's Rezoning Proposal for the Gowanus; and

WHEREAS, the applicant states that the analysis reflects that there are a total of only eight vacant lots in the study area with a width of 25 feet or less in the manufacturing zoning district, accounting for only 1.8 percent of the lots in the study area; and

WHEREAS, the applicant further states that four of these vacant narrow lots are directly adjacent to each other such that they have the opportunity for assemblage, while two of the other vacant lots are directly adjacent to existing manufacturing uses and vacant space, giving the lots the ability to merge and create a large development lot for commercial or manufacturing uses; and

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WHEREAS, the applicant notes that there are only two lots in the study area other than the subject site (less than 0.5 percent of lots within the study area) which have the condition of being narrow vacant lots zoned for manufacturing use which cannot merge with an adjacent vacant or commercial site to create a larger, commercially viable development lot; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the use of the property in conformance with applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conforming three-story commercial building with ground floor retail and office use above and (2) the proposed four-story residential building; and

WHEREAS, at the Board's direction, the applicant supplemented its feasibility study with an analysis of a conforming industrial building; and

WHEREAS, the applicant concluded that only the proposed use would realize a reasonable return; and

WHEREAS, the applicant submitted evidence that the owner had unsuccessfully attempted to market the building for a conforming use; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the buildings surrounding the property are predominantly residential; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other residential uses, including the adjacent residential buildings and others on the subject block; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the various uses in the immediate vicinity of the site; and

WHEREAS, during the course of the hearing process, the applicant submitted revised plans reflecting that the fourth floor of the proposed building will be set back 15 feet from the street line, and submitted a streetscape which reflects that the height of the building fits within the context of the surrounding buildings on the street; and

WHEREAS, the applicant notes that DCP issued a Gowanus Canal Corridor Rezoning Study in 2008 which outlined the basis for rezoning the subject neighborhood and specifically recommended that the blocks immediately surrounding and including the subject site be rezoned to an

M1-4/R6B zoning district, which would permit the use and bulk of the proposed building as-of-right; and

WHEREAS, the applicant states that the Draft Zoning Proposal for the subject neighborhood reflects an acknowledgment that residential use is appropriate for the proposed site; however, the applicant represents that the Environmental Protection Agency's designation of the Gowanus Canal as a Superfund site had the effect of halting DCP's proposed rezoning of the neighborhood; and

WHEREAS, as to the bulk, the applicant states that the proposed building complies with R6B (Quality Housing) equivalent regulations; and

WHEREAS, based upon its review of the submitted land use map and its site inspection, the Board agrees that the area includes a significant amount of residential use, and finds that the introduction of the proposed building will not impact nearby conforming uses nor negatively affect the area's character; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, the Board finds that the proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA019K, dated May 31, 2012; and

WHEREAS, the EAS documents indicate that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as



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stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit the construction of a four-story residential building, which is contrary to ZR § 42-00 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 23, 2012"– six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 5,421 sq. ft. (2.0 FAR), four dwelling units, and a maximum height of 40'-0", as indicated on the BSA-approved plans;

THAT the cellar will not be used for dwelling, habitable, or sleeping purposes, as indicated on the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 12, 2012.

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## 8-12-BZ

### CEQR #12-BSA-064K

APPLICANT – Law Office of Fredrick A. Becker, for Gladys Mandalaoui and Solomon Mandalaoui, owners.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R4 zoning district/Special Ocean Parkway District.

PREMISES AFFECTED – 705 Gravesend Neck Road, north side of Gravesend Neck Road, between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, block 7159, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 24, 2012, acting on Department of Buildings Application No. 320404745, reads in pertinent part:

1. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 & 23-48 of the Zoning Resolution.
2. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.
3. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
4. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
5. Creates non-compliance with respect to the open space and is contrary to Section 23-141 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on May 8, 2012 after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, at hearing, an adjacent neighbor provided oral testimony in opposition to this application, citing concerns with drainage problems and associated flooding on the site; and

WHEREAS, the subject site is located on the north side of Gravesend Neck Road, between East 7<sup>th</sup> Street and East 8<sup>th</sup> Street, in an R4 zoning district within the Special Ocean Parkway District; and

WHEREAS, the subject site has a total lot area of 2,192 sq. ft., and is occupied by a single-family home with a floor area of 1,548 sq. ft. (0.71 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,548 sq. ft. (0.71 FAR) to 2,323 sq. ft. (1.06 FAR); the maximum permitted floor area is 1,644 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes to provide an open

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space of 47 percent (55 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 53 percent (45 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the eastern lot line with a width of 0'-10 ¾", and to maintain the existing side yard along the western lot line with a width of 3'-10 ¼" (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, in response to the concerns raised by the adjacent neighbor, the applicant notes that the Department of Buildings ("DOB") will require that the site provide proper drainage in accordance with the Building Code; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R4 zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 18, 2012"-(11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,323 sq. ft. (1.06 FAR); an open space of 47 percent; lot coverage of 53 percent; a side yard with a minimum width of 0'-10 ¾" along the eastern lot line; a side yard with a minimum width of 3'-10 ¼" along the western lot line; and a rear yard with a

minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 12, 2012.

## 26-12-BZ

### CEQR #12-BSA-074Q

APPLICANT –Sheldon Lobel, P.C., for Elmnic, LLC, owner.

SUBJECT – Application February 3, 2012 – Special Permit (§73-52) to allow the extension of accessory commercial parking in a residential zoning district. C1-2/R6B & R4-1 zoning districts.

PREMISES AFFECTED – 73-49 Grand Avenue, northwest corner of the intersection formed by Grand Avenue and 74<sup>th</sup> Street, Block 2491, Lot 40, Borough of Queens.

### COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Superintendent, dated January 27, 2012, acting on Department of Buildings Application No. 420521215, reads in pertinent part:

"Proposed accessory parking in the R4-1 portion of the premises is contrary to ZR 22-10 and must be referred to the BSA for approval." and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C1-2 (R6B) zoning district and partially within an R4-1 zoning district, the extension of the C1-2 zoning district regulations 25 feet into the R4-1 zoning district, to allow for accessory parking for the commercial use (Use Group 6) located in the C1-2 portion of the site, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on April 24, 2012 after due notice by publication

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in *The City Record*, with a continued hearing on May 15, 2012, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Queens, recommends approval of this application, with the following conditions: (1) that the property be maintained graffiti free; and (2) that a fence with a height of four feet and with opaque slats be installed along the 53<sup>rd</sup> Road side of the property; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the subject site is located on an irregularly-shaped corner through lot with 102 feet of frontage on Grand Avenue, 109 feet of frontage on 74<sup>th</sup> Street and 100 feet of frontage on 53<sup>rd</sup> Road; and

WHEREAS, the site has a total lot area of 12,037 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant one-story commercial building located along the northern portion of the site along 53<sup>rd</sup> Road and 74<sup>th</sup> Street, which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a one-story bank (Use Group 6) with a floor area of 2,939 sq. ft. (0.24 FAR) and 16 accessory parking spaces,

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-52 to extend the C1-2 zoning district regulations 25 feet into the portion of the zoning lot located within an R4-1 district; and

WHEREAS, the applicant states that the extension of the C1-2 district would allow for the usage of the R4-1 portion of the lot for ten parking spaces; and

WHEREAS, the applicant further states that the building would be entirely within the C1-2 district; and

WHEREAS, the applicant notes that the majority of the zoning lot is located within a C1-2 (R6B) zoning district that extends 100 feet into the site from Grand Avenue, but that the remaining portion of the zoning lot is located within an R4-1 zoning district; and

WHEREAS, the portion of the site that is within the C1-2 (R6B) zoning district occupies 10,222 sq. ft. (84.9 percent) of the zoning lot, and the portion of the site that is within the R4-1 zoning district occupies 1,790 sq. ft. (15.1 percent) of the zoning lot; and

WHEREAS, the R4-1 portion fronts on 53<sup>rd</sup> Road and occupies an irregularly-shaped portion of the site, located to the west of the C1-2 portion of the site; and

WHEREAS, the C1-2 district permits the Use Group 6 bank; the R4-1 district permits only residential or community facility uses; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining

portion of the zoning lot where such use is not permitted, provided: (a) that, without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds and historic Sanborn maps establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, 10,222 sq. ft. (84.9 percent) of the site's total lot area of 12,037 sq. ft. is located within the C1-2 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant represents that it would not be economically feasible to use or develop the R4-1 portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states that the R4-1 portion is irregularly shaped, with a varying width of 28 feet to six feet, and given yard requirements would be difficult to develop with a conforming use; and

WHEREAS, based upon the shape and yard requirements, the Board finds that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R4-1, for a permitted use; and

WHEREAS, as to the second finding, the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, as noted above, the proposed building will be located entirely within the C1-2 district; and

WHEREAS, the applicant states that it will provide landscaping and a fence along the street and side lot line of the R4-1 portion of the site; and

WHEREAS, the applicant further states that ingress and egress to the site will be within the commercial zoned portion of the site located on Grand Avenue and 74<sup>th</sup> Street; and

WHEREAS, the applicant represents that the surrounding area is characterized by commercial uses; and

WHEREAS, specifically, the applicant states that the intersection of Grand Avenue and 74<sup>th</sup> Street is entirely commercial in context; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C1-2 zoning district portion of the lot into the R4-1 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding

# MINUTES

neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the proposed action will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-52 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA074Q, dated February 3, 2012; and

WHEREAS, the EAS documents that the operation of the bank would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C1-2 (R4-1) zoning district and partially within an R4-1 zoning district, the extension of the C1-2 zoning district regulations 25 feet into the R4-1 zoning district, to allow for accessory parking for a new bank (Use Group 6) at the site, contrary to ZR § 22-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 6, 2012" – seven(7) sheets; and *on further condition*:

THAT landscaping and trees will be planted in accordance with the BSA-approved plans;

THAT fencing will be provided, and the portion along 53<sup>rd</sup> Road will be maintained with ivy, in accordance with the BSA-approved plans;

THAT all lighting will be directed down and away from adjacent residential uses;

THAT the above conditions will be implemented prior

to the opening date of the bank;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 12, 2012.

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## 53-12-BZ

### CEQR #12-BSA-086K

APPLICANT – Law Office of Frederick A. Becker, for Linda Laitz and Robert Laitz, owners.

SUBJECT – Application March 8, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); less than the minimum required side yard (§23-461 & 23-48) and less than the required rear yard (§23-47). R2 zoning district. PREMISES AFFECTED – 1232 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, between Avenue L and Avenue M, Block 7644, Lot 59, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 17, 2012, acting on Department of Buildings Application No. 320382778, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.
3. Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed side yard is less than the minimum required.

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4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on May 15, 2012 after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 27<sup>th</sup> Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,651 sq. ft. (0.66 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,651 sq. ft. (0.66 FAR) to 2,558 sq. ft. (1.02 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 54 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 1'-0", and to maintain the existing side yard along the southern lot line with a width of 8'-0" (a minimum width of 5'-0" is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted an FAR study which identified 21 homes within a 400-ft. radius of the site which have an FAR of 1.0 or greater, including five homes which were enlarged pursuant to a special permit granted by the Board under ZR § 73-622; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project

will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 8, 2012"-(11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,558 sq. ft. (1.02 FAR); an open space ratio of 54 percent; a side yard with a minimum width of 1'-0" along the northern lot line; a side yard with a width of 8'-0" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 12, 2012.

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## 71-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and

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Britton Avenue, Block 1513, Lot 6, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for decision, hearing closed.

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## 96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6<sup>th</sup> Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of east 6<sup>th</sup> Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Off calendar.

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## 107-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Yeshiva Bais Yitzchok, owners.

SUBJECT – Application August 3, 2011 – Variance (§72-21) to permit the enlargement of a synagogue (*Congregation Yeshiva Bais Yitzchok*) contrary to the bulk requirements for community facility buildings. R4-1 zoning district.

PREMISES AFFECTED – 1643 East 21<sup>st</sup> Street, east side of 21<sup>st</sup> Street between Avenue O and P, Block 6768, Lot 84, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for decision, hearing closed.

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## 117-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (§72-21) to permit the development of a new athletic center accessory to an existing UG 3 school (*Mary Louis Academy*), contrary to maximum height and sky exposure

plane (§24-521), minimum rear yard, (§24-382) minimum front yard (§24-34) and nameplates or identification signs (§22-321). R1-2 and R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

## COMMUNITY BOARD # 8Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 17, 2012 at 1:30 P.M., for continued hearing.

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## 168-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*), contrary to floor area (§§113-11, 503, 51, 77-02, 23-141, 24-11), open space and lot coverage (§§23-141, 24-11, 77-02, 113-11), front, side and rear yard (§§113-11, 503, 543, 77-02, 23-464, 47, 471), height and setback (§§113-11, 503, 55, 77-02, 23-631, 633, 24-593), planting and landscaping (§§113-12, 23-45, 23-451, 113-30) and parking (§§113-58, 25-31) regulations. R5, R6A, and R5 (Ocean Parkway Special District) zoning district.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel, Michael Goldblum, Domenic M. Recchia, Theresa Scavo of CB 15, Ronald Tawil of CB 15 and Touvi Assis.

For Opposition: Stuart A. Klein.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 1:30 P.M., for continued hearing.

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## 191-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Zerillo Family Trust, owner.

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to maximum allowable floor area (§23-141(b)). R 4-1 zoning district.

PREMISES AFFECTED – 1246 77<sup>th</sup> Street, between 12<sup>th</sup> and 13<sup>th</sup> Avenues, Block 6243, Lot 24, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for continued hearing.

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## 20-12-BZ

APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Retro Fitness*) in an under construction mixed residential/commercial building. M1-2/R6B zoning district.

PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3<sup>rd</sup> Street, northeast corner of Berry and N. 3<sup>rd</sup> Streets, Block 2351, Lot 1087, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eldud Gothelf.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for decision, hearing closed.

## 44-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 952-1064 Flatbush Avenue ELB LLC, owner; 1024 Flatbush Avenue Fitness Group, LLC, lessee.

SUBJECT – Application February 23, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing four-story building. C4-4A zoning district.

PREMISES AFFECTED – 1024 Flatbush Avenue, west side of Flatbush Avenue between Regent Place and Beverly Road, Block 5125, Lot 56, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for decision, hearing closed.

## 48-12-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations (§121-11). C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of

Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for continued hearing.

## 78-12-BZ

APPLICANT – Francis R. Angelino, Esq., for Jonathan P. Rosen, owner; End 2 End Game Training LLC, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*End 2 End*). C6-4A zoning district.

PREMISES AFFECTED – 443 Park Avenue South, northeast corner of East 30<sup>th</sup> Street, Block 886, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 1:30 P.M., for decision, hearing closed.

## 91-12-BZ

APPLICANT – Jorge Lee, for Juan Noboa, owner.

SUBJECT – Application April 11, 2012 – Re-instatement (§11-411) of a previously approved variance permitting commercial retail (UG 6) in a residential district, which expired on March 29, 1998. R8 zoning district.

PREMISES AFFECTED – 846 Gerard Avenue, east side of Gerard Avenue, 132.37' south of East 161<sup>st</sup> Street, Block 2474, Lot 35, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Jorge Lee.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for decision, hearing closed.

## 111-12-BZ

APPLICANT – Eric Palatnik, P.C., for Wells 60 Broad Street, LLC, owner; Bree and Oliver NYC Inc., lessee.

SUBJECT – Application April 19, 2012 – Special Permit (§73-36) for a physical culture establishment (*Cross Fit Wall Street*). C5-5 (LM) zoning district.

PREMISES AFFECTED – 60 New Street, 54-68 Broad Street; 52-66 New Street, north of Beaver Street, Block 24,

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Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #1M**

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17,  
2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



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# BULLETIN

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AND APPEALS

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Volume 97, No. 26

June 27, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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**190-12-A**

42-45 12th Street, north of Northeast corner of 12th Street and 43rd Street, Block 458, Lot(s) 83, Borough of **Queens, Community Board: 2**. Appeal from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 district.  
-----

**191-12-A**

42-45 12th Street, north of northeast corner of 12th Street and 43rd Avenue, Block 458, Lot(s) 83, Borough of **Queens, Community Board: 2**. Appeal from Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-4 district.  
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**193-12-BZ**

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**195-12-BZ**

108-15 Crossbay Boulevard, between 108th and 109th Avenues, Block 9165, Lot(s) 291, Borough of **Queens, Community Board: 10**. Re-instatement (§11-411) of a previously approved variance, permitting the construction of a two story office building (UG6) 64-59 with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules of Practice and Procedure. R4 zoning district. R4 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JULY 17, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 17, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**39-65-BZ**

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted Variance (72-01) to convert the existing repair bays to an accessory convenience store at an existing gasoline service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2000; and Waiver of the Rules. C-3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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**579-78-BZ**

APPLICANT – Alfonso Duarte, for LEM LEE 58 L.P c/o Mautner-Glick Management, owner.

SUBJECT – Application April 24, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted within an existing six story and cellar multiple dwelling the conversion of the front portion of the first floor and cellar into retail stores, which expired on January 30, 2004; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 236-238 East 58<sup>th</sup> Street, south side 160' west of 2<sup>nd</sup> Avenue, Block 1331, Lot 31, Borough of Manhattan.

**COMMUNITY BOARD #6 M**  
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**406-82-BZ**

APPLICANT – Eric Palatnik, P.C., for Adolf Clause and Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application May 22, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Special Permit (73-243) for an eating and drinking establishment (McDonald's) with accessory drive-thru which expired on May 3, 2012. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**  
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**APPEALS CALENDAR**

**46-12-A**

APPLICANT – Eric Palatnik, P.C., for Tremont Three, LLC, owner.

SUBJECT – Application March 1, 2012 – Application to permit the proposed mixed use development which rests partially within the bed of the mapped but unbuilt portion of East Tremont Avenue contrary to General City Law Section 35. C4-5X(R7X) Zoning District

PREMISES AFFECTED – 4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues, Block 3027, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #6BX**  
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**JULY 17, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 17, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**113-11-BZ**

APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.

SUBJECT – Application August 10, 2011– Variance (§72-21) to permit the proposed enlargement to an existing Use Group 3 nursing home which does not comply with the rear yard equivalent requirements of ZR 24-382. R7-1 zoning district.

PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.

**COMMUNITY BOARD #8BX**  
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**178-11-BZ**

APPLICANT – Eric Palatnik, P.C., for Elie Zeitoune, owner.

SUBJECT – Application November 29, 2011 – Special Permit (73-622) for the enlargement of an existing two story, semi-detached single family home contrary to floor area and open space (ZR 23-141(b)); side yard requirement (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1944 East 12<sup>th</sup> Street, between Avenue S and T, Block 7290, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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# CALENDAR

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**9-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**43-12-BZ**

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit the construction of a residential development of approximately 30,792 square feet on a 25'8" x 200'2" through lot which does not comply with the use or bulk regulations for the M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**87-12-BZ**

APPLICANT – Troutman Sanders, LLP, for A & J Properties, LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application April 11, 2012 – Special Permit (§73-36) to permit the continued operation of the existing physical culture establishment (*Bally Total Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 1720-28 Sheepshead Bay Road, 123.21' south of the intersection of Vorhies Avenue, Block 8770, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 19, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**678-74-BZ**

APPLICANT – Tyree Service Corp., for Capitol Petroleum Group, owners.

SUBJECT – Application March 30, 2012 – Amendment of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) with accessory uses. The application seeks to legalize the placement of fueling islands and number of fueling dispensers. C1-6 zoning district.

PREMISES AFFECTED – 63 8<sup>th</sup> Avenue, southwest corner of West 13<sup>th</sup> Street and 8<sup>th</sup> Avenue, Block 616, Lot 46, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for an automotive service station with accessory uses (Use Group 16); and

WHEREAS, a public hearing was held on this application on June 5, 2012 after due notice by publication in *The City Record*, and then to decision on June 19, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, but notes concerns regarding traffic caused by the site; and

WHEREAS, the site is located on an irregularly-shaped corner lot bounded by West 13<sup>th</sup> Street to the north, Eighth Avenue to the east, and Horatio Street to the south, in a C1-6 zoning district within the Greenwich Village Landmark District; and

WHEREAS, the subject site is occupied by an automotive service station with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 8, 1975 when, under the subject

calendar number, the Board granted a variance to permit the enlargement in lot area and reconstruction of an automotive service station with accessory uses; and

WHEREAS, the applicant now requests an amendment to legalize a modification to the pump island layout and the size of the underground storage tanks (“USTs”) from the previously-approved plans; and

WHEREAS, specifically, the applicant seeks to legalize the southernmost pump island on the site which varies from the previously-approved plans in that it provides one dispenser instead of two and is orientated parallel to Eighth Avenue rather than perpendicular to Horatio Street, as approved; and

WHEREAS, the applicant also seeks to replace the three 4,000 gallon USTs with one 12,000 gallon UST and one 12,000 gallon compartment UST with a 8,000/4,000 product split; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the site complies with the landscaping reflected on the previously-approved plans; and

WHEREAS, in response, the applicant submitted photographs reflecting the existing trees located within the planted islands, in compliance with the previously-approved plans; and

WHEREAS, the Board also questioned whether the applicant had addressed the issues raised by the Fire Department regarding the proposed replacement of the existing USTs on the site; and

WHEREAS, in response, the applicant states that these issues will be addressed prior to obtaining a certificate of occupancy; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (“LPC”) dated August 30, 2011, and letters from LPC dated October 11, 2011 and March 1, 2012, approving the proposed work at the site; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 8, 1975, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received March 30, 2012’–(2) sheets and ‘June 5, 2012’–(1) sheet; and *on further condition*:

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure

# MINUTES

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 120818669)

Adopted by the Board of Standards and Appeals June 19, 2012.

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## 290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application February 2, 2012 – Amendment of an approved variance (§72-21) for a new residential building with ground floor commercial, contrary to use regulations. The amendment requests an increase in commercial floor area and a decrease in the residential floor area. M1-5B zoning district.

PREMISES AFFECTED – 372 Lafayette Street, block bounded by Lafayette, Great Jones and Bond Streets, Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

## COMMUNITY BOARD #2M

### APPEARANCES –

For Applicant: Jim Power.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting the construction of a six-story mixed-use commercial/residential building; and

WHEREAS, a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, and then to decision on June 19, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Lafayette Street, between Great Jones Street and Bond Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the Board has exercised jurisdiction over the site since April 17, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a six-story, eight-unit residential building with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, on May 24, 2011, the Board granted an extension of time to complete construction, to expire on May

24, 2015; and

WHEREAS, the applicant now requests an amendment to permit certain modifications to the previously-approved plans; and

WHEREAS, specifically, the applicant seeks to (1) reconfigure the ground floor of the building by moving the residential entrance and elevator toward the middle of the building and establishing two separate retail spaces to the north and south along Lafayette Street; (2) reconfigure the cellar level to include retail spaces connected to the ground floor retail spaces; and (3) remove the terrace on the fifth floor and reconfigure the terrace/roof deck on the sixth floor; and

WHEREAS, the applicant states that the proposed amendment would result in a slight increase in the height of the building, from 70'-10 3/4" to 72'-11 1/4", and a slight decrease in the total floor area of the building, from 15,556 sq. ft. to 15,520 sq. ft.; and

WHEREAS, the applicant notes that the retail floor area would be increased from 1,530 sq. ft. to 2,143 sq. ft., with an additional increase of approximately 1,200 sq. ft. of floor space at the cellar, and the residential floor area would be reduced from 14,026 sq. ft. to 13,377 sq. ft.; and

WHEREAS, the applicant states that the proposed amendment would not have any significant impact on the reasonable return analysis that formed the basis of the Board's original grant for the following reasons: (1) the total building area would be approximately the same; (2) the increase in the retail area is offset by the loss of approximately 650 sq. ft. of residential floor area above grade and the loss of accessory residential storage area in the cellar which would have contributed to the value of the residential units; (3) the retail in the subject proposal is less valuable than the retail in the previously-approved scheme because it is broken up into two smaller units which generate less rent on a square foot basis; and (4) most of the increase in retail area is cellar area, which is substantially less valuable than ground floor area; and

WHEREAS, the applicant represents that the proposed amendment will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") approving the alterations to the proposed building, dated June 13, 2012; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 17, 2007, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work substantially complies to drawings marked 'Received February 2, 2012' – eleven (11) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

# MINUTES

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 120933302)

Adopted by the Board of Standards and Appeals, June 19, 2012.

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## 319-53-BZ

APPLICANT – Ficara & Associates, P.C., by Majed El Jamal, for 22<sup>nd</sup> Street Realty LLC, owner.

SUBJECT – Application August 16, 2011 – Extension of Term (§11-411) for the continued operation of an automotive repair shop with no body work which expired on January 31, 2011; Waiver of the Rules. R5 zoning district. PREMISES AFFECTED – 1135 East 222<sup>nd</sup> Street, northwest corner of Eastchester Road, Block 4900, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: John Anzalone.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for decision, hearing closed.

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## 718-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 741 Forest Service Corp., owner; Avi Diner, lessee.

SUBJECT – Application April 10, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which will expire on July 2, 2012. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Krinsman.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for continued hearing.

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## 311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to

obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for continued hearing.

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## 120-02-BZ

APPLICANT – Stuart Klein, Esq., for East Village Gardens Corp., owner; Muscles Metamorphosis, lessee.

SUBJECT – Application March 22, 2012 – Extension of Term of previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Iron & Silk Fitness Center*) which expired on February 1, 2012; an Amendment for the change in ownership; waiver of the rules. R7A zoning district.

PREMISES AFFECTED – 42-46 Avenue A, corner of Avenue A and East 3<sup>rd</sup> Street, Block 399, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for decision, hearing closed.

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## 294-06-BZ

APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.

SUBJECT – Application February 8, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.

PREMISES AFFECTED – 31-11 Broadway, between 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 613, Lots 1 & 4, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Vivian R. Krieger.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 10 A.M., for continued hearing.

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## 238-07-BZ

APPLICANT – Goldman Harris, LLC, for OCA Long Island City, LLC; OCA Long Island City II, LLC, owner; OCA Long Island City III, LLC, lessee.



# MINUTES

SUBJECT – Application May 25, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a 13-story residential and community facility building which expires on September 28, 2012. M1-4/R6A(LIC) & M1-4 zoning district.

PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, western half of block bounded by 46<sup>th</sup> Road, 47<sup>th</sup> Avenue, Vernon Boulevard and 5<sup>th</sup> Street. Block 28, Lots 12, 15, 17, 18, 21 & 121, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eugene Travers.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 86-11-A

APPLICANT – Cozen O’Connor, for Perl binder Holdings, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the Department of Buildings’ revocation of an approval to permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2<sup>nd</sup> Avenue, northwest corner of East 36<sup>th</sup> Street and 2<sup>nd</sup> Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

## COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Harold Hornstein.

**ACTION OF THE BOARD** – Appeal denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Borough Commissioner of the Department of Buildings (“DOB”), dated June 9, 2011 to revoke permits in connection with Application No. 110179912 for a ground sign structure, and Application No. 110301343 for a two-sided illuminated advertising sign (the “Permits”) at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

Request to allow advertising sign within C1-9 is hereby denied.

The zoning lot in question is subject to Board of Standards and Appeals (BSA) calendar number 280-01-BZ granted on 5/7/2002. By letter dated 12/17/2003, the then Chairman of the BSA

determined that the installation of a sign 54’-6” high by 14’ wide relocated to the corner of 2<sup>nd</sup> Avenue and East 37<sup>th</sup> Street, was found to be substantially in compliance with the above referenced BSA grant.

However, the location and size as approved per job number 110179912 does not conform to the BSA letter and the BSA-approved plans attached thereto. The BC-1 Reconsideration Form signed by former Borough Commissioner Santulli, PE, on 10/28/2008 is unclear in that the applicant did not specify on the form that the sign would be relocated from the corner of 2<sup>nd</sup> Avenue and East 37<sup>th</sup> Street to the corner of 2<sup>nd</sup> Avenue and East 36<sup>th</sup> Street. Nonetheless, to the extent that such BC-1 form purports to authorize the relocation of the sign contrary to the size and location approved by BSA, such determination was issued in error and is hereby rescinded because the Department of Buildings does not have the legal authority to modify the terms of the BSA grant.

Further, if the applicant chooses to construct a sign of the size and in the location approved by BSA (the corner of 2<sup>nd</sup> Avenue and East 37<sup>th</sup> Street), the applicant shall provide evidence to the borough office that the original grant has not lapsed or has not been extended pursuant to ZR 72-23.

In addition, the original nonconforming sign was attached to the side of a building on Second Avenue and this building and the sign have been demolished and removed. Therefore, the sign has been discontinued and is subject to ZR 52-00. Pursuant to ZR 52-83 (“Non-Conforming Advertising Signs”) the sign could have been reconstructed provided there was not a discontinuance of more than two years, notwithstanding ZR 52-22, provided, however, that the sign is located in the same location and position.

It should be noted that, with regard to measuring the length of discontinuance, the time during which the building was being demolished upon order of the City of New York could, in accordance with 149 Fifth Ave. Corp. v. Chin, 305 A.D.2d 194 (1<sup>st</sup> Dept. 2003) be seen to toll the two-year limitation. However, as it has already been more than two years since the completion of the demolition, and because the sign was not reconstructed within two years of the date of demolition, in the same location and position per ZR 52-83 (...same size, etc), the nonconforming use is determined to have been discontinued; and

WHEREAS a public hearing was held on this application on December 13, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2011, and then to decision on June 19, 2012; and

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# MINUTES

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commission Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends disapproval of this appeal; and

WHEREAS, the site comprises a series of formerly independent tax lots located on the west side of Second Avenue, between East 36<sup>th</sup> Street and East 37<sup>th</sup> Street (Block 917, Lots 21 and 24-31) and is currently vacant except for a public parking lot and a double-sided advertising sign and sign structure (the "Current Double-Sided Sign"); and

WHEREAS, in 1980, the site was within a C6-4 zoning district and was occupied by a mixed-use residential/commercial building, at which time DOB authorized the installation of a sign along the north-facing wall of the building 35'-0" above curb level (the "Former Wall Sign"); and

WHEREAS, subsequently, the zoning map was amended to change the subject site to a C1-9 zoning district, which does not allow advertising signs as of right; and

WHEREAS, this appeal is brought on behalf of the owner of the subject sign (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's determination that the nonconforming use status of the subject sign has been discontinued for more than two years; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, on August 4, 1980, DOB issued permits for the Former Wall Sign - an existing illuminated advertising sign and sign structure with dimensions of 14'-0" high by 48'-0" wide on a building wall 35'-0" above curb level on the north wall of the building at 669 Second Avenue (Lot 28); and

WHEREAS, the 1980 permits were associated with DOB Application No. ES 42/80; and

WHEREAS, on May 7, 2002, pursuant to BSA Cal. No. 280-01-BZ, the Board granted a variance to allow for the construction of a new 34-story mixed-use building at the site, which was then occupied by three five-story multiple dwellings and a public parking lot on Block 917, Lots 21, 24, 30, 32, and 34; and

WHEREAS, on December 17, 2003, the Board issued a letter approving the relocation of the existing legal non-conforming sign with modified dimensions of 54'-6" high by 14'-0" wide (the "Variance Sign"); and

WHEREAS, the building approved under the variance has not yet been constructed; and

WHEREAS, on April 2, 2008, DOB issued a violation for failure to maintain the building at 669 Second Avenue (Lot 28), where the Former Wall Sign was permitted in 1980; and

WHEREAS, on June 3, 2008, pursuant to DOB Application No. 110179912, the Appellant filed to install a structure for a new sign (the "Current Sign Structure"); the application was professionally certified; and

WHEREAS, on June 20, 2008, DOB issued a permit for the Current Sign Structure on Lots 26 and 27 (the corner of Second Avenue and East 36<sup>th</sup> Street); and

WHEREAS, on July 8, 2008, the 669 Second Avenue building was demolished under Application No. 110135620, pursuant to a DOB order in an emergency declaration, dated April 3, 2008; and

WHEREAS, on July 24, 2008, the Appellant filed an application pursuant to Application No. 110301343 for the sign installation; and

WHEREAS, on August 13, 2008, DOB issued objections for Application No. 110301343, including an objection about the location of the sign; and

WHEREAS, on October 29, 2008, DOB approved a reconsideration request to change the size and location of the Variance Sign from a single-sided sign with dimensions of 54'-6" high by 14'-0" wide at the corner of Second Avenue and East 37<sup>th</sup> Street to a double-sided sign with dimensions of 14'-0" high by 48'-0" wide, ten feet above curb level at the corner of Second Avenue and East 36<sup>th</sup> Street, based on the following determination:

OK to accept prior sign as grandfathering of existing non-conforming sign. OK to accept lower sign as no increase in degree of non compliance; and

WHEREAS, on December 11, 2008, DOB issued a permit for the Current Double-Sided Sign, two back-to-back signs each with dimensions of 14'-0" by 48'-0"; in the DOB application, the Appellant described the Current Double-Sided Sign as "a direct replacement for sign filed under 42/80;" and

WHEREAS, the Appellant filed the permits for both the Current Sign Structure and the Current Double-Sided Sign under Block 917, Lot 28, and the plans for the Current Double-Sided Sign show the double-sided sign located on Lot 28, but the plans for the Current Sign Structure show a double-sided sign located on Lots 26 and 27; and

WHEREAS, the Appellant asserts that the Current Double-Sided Sign was fully completed and installed by the end of 2008, less than one year after the Former Wall Sign was removed as part of the demolition of the 669 Second Avenue building; and

WHEREAS, in 2010, DOB commenced an audit of approvals for the Current Double-Sided Sign; on April 30, 2010 DOB issued an Intent to Revoke Approvals and Permits for Application No. 110179912 and on August 25, 2010, DOB issued an Intent to Revoke Approvals and Permits for Application No. 110301343, citing the existing zoning regulations; and

WHEREAS, on July 26, 2010, DOB revoked the permit for the Current Sign Structure; and

WHEREAS, on May 5, 2011, DOB revoked the permit for the Current Double-Sided Sign; and

WHEREAS, on June 9, 2011, DOB issued the Final Determination concluding that "because the sign was not reconstructed within two years of the date of demolition, in the same location and position per ZR § 52-83 (. . . same size, etc.), the non-conforming use is determined to have

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been discontinued;” and

## RELEVANT STATUTORY PROVISIONS

### *ZR § 12-10 Definitions*

Surface area (of a sign) (4/8/98)

...When two #signs# of the same shape and dimensions are mounted or displayed back to back and parallel on a single free-standing structural frame, only one of such #signs# shall be included in computing the total #surface area# of the two #signs#...

\* \* \*

### *ZR § 52-11 – Continuation of Non-Conforming Uses/General Provisions*

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

\* \* \*

### *ZR § 52-61 – Discontinuance/General Provisions*

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . .

\* \* \*

### *ZR § 52-83 – Non-Conforming Advertising Signs*

In all #Manufacturing Districts#, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Sections 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) or 42-55, any #non-conforming advertising sign# except a #flashing sign# may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new #non-conformity# or an increase in the degree of #non-conformity# of such #sign#;
- (b) an increase in the #surface area# of such #sign#; or
- (c) an increase in the degree of illumination of such #sign#...; and

## THE APPELLANT’S POSITION

### *Compliance with ZR § 52-83*

WHEREAS, the Appellant asserts that the Current Double-Sided Sign is in substantially the same location as the Former Wall Sign and should be permitted to remain; and

WHEREAS, the Appellant asserts that it and DOB agree that prior to the 2008 demolition of the building, the Former Wall Sign was a legal non-conforming use regulated by Article V, Chapter 2 of the Zoning Resolution; and

WHEREAS, specifically, pursuant to ZR § 52-11, a non-conforming use is permitted to continue except as provided in ZR § 52-61 and other related provisions; and

WHEREAS, the Appellant asserts that ZR § 52-61 provides the general rule that when “substantially all” of the non-conforming use is discontinued for a period of two years, the rights to the non-conforming use cease and only a conforming use may occupy the site; and

WHEREAS, the Appellant asserts that prior to the building’s demolition in April 2008, the Former Wall Sign was regulated by ZR §§ 52-11 and 52-61 but that after the demolition, ZR § 52-83 became relevant as the Former Wall Sign was removed; and

WHEREAS, the Appellant cites to the conditions set forth at ZR § 52-83, which include that a:

non-conforming advertising sign . . . may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new *non-conformity* or an increase in the degree of *non-conformity* of such *sign*;
- (b) an increase in the *surface area* of such *sign*; or
- (c) an increase in the degree of illumination of such *sign*; and

WHEREAS, the Appellant asserts that that provision allows for the reconstruction or replacement of the Former Wall Sign, under certain conditions; and

WHEREAS, the Appellant asserts that first, the provision states that the replacement sign be in the same “location” and “position,” but that neither term is defined and, thus, there is not any basis for determining that the location and position of the Current Double-Sided Sign is inconsistent with the provision; and

WHEREAS, the Appellant asserts that paragraphs (a) through (c) express the intention of the Zoning Resolution to allow for the replacement sign to differ from the original sign; and

WHEREAS, the Appellant asserts that if the intent of the text were to mandate precise replacement of the sign, then the criteria in paragraphs (a) through (c) would be unnecessary; and

WHEREAS, the Appellant asserts that the Current Double-Sided Sign meets the criteria set forth at paragraphs (a) through (c) in that (a) there is no new non-compliance or increase in the degree of non-compliance, (b) there is no increase in the surface area of the sign, and (c) there is no increase in the degree of illumination; and

WHEREAS, the Appellant states that DOB’s interpretation of ZR § 52-83 is incorrect because when read with ZR § 12-10, a double-sided sign is permitted without increasing the surface area; and

### *Tolling of the Discontinuity Period*

WHEREAS, the Appellant asserts that DOB cannot now find a discontinuance based on compliance with its prior decision; and

WHEREAS, the Appellant asserts that even if the Borough Commissioner’s 2008 decision were erroneous, DOB does not have the authority to remove all non-conforming use rights; and

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WHEREAS, the Appellant asserts that the courts have recognized that the rights to a non-conforming advertising sign have been determined to be a “valuable property interest” such that its termination under suspect circumstances can give rise to an inference that such an action is an “unconstitutional taking,” 149 Fifth Ave. Corp. v. Chin, 305 A.D.2d 194, 759 N.Y.S.2d 455 (1<sup>st</sup> Dept. 2003); and

WHEREAS, the Appellant asserts that DOB’s action to revoke the permit is outside of the text of the Zoning Resolution and constitutes the removal of a property right since ZR § 52-61 provides that the relevant time period to find discontinuance is two years in which substantially all of the non-conforming use was discontinued; and

WHEREAS, the Appellant asserts that the period of actual discontinuance between the removal of the Former Wall Sign and the installation of the Current Double-Sided Sign was approximately seven to eight months; and

WHEREAS, the Appellant asserts that DOB is seeking to use an equitable argument that since the replacement of the sign was in a different location, there was not any replacement pursuant to ZR § 52-83; and

WHEREAS, the Appellant asserts that the Current Double-Sided Sign was installed after consultation with DOB and that DOB allowed the sign to be located other than in the precise location of the Former Wall Sign; and

WHEREAS, the Appellant asserts that the courts in 149 Fifth Ave. and Matter of Hoffman v. Board of Zoning & Appeals of the Vill. of Russell Gardens, 155 A.D.2d 600, 547 N.Y.S.2d 657 (2d Dept. 1989) have determined that the required continuity time period for non-conforming uses cannot be so strictly applied as to ignore the totality of the circumstances in which the use cessation occurred; and

WHEREAS, the Appellant relies on 149 Fifth Ave. and Hoffman to establish that courts have applied equity to non-conforming use scenarios; and

WHEREAS, the Appellant asserts that in 149 Fifth Ave., the sign was removed from a building for 27 months during which time the property owner performed legally required façade work and that DOB’s and the Board’s determinations to prohibit replacing the original sign were overturned because the court found that under the circumstances, a finding that the Zoning Resolution authorized termination of the sign rights during the façade repair would raise a possible issue of an unconstitutional taking; and

WHEREAS, in Hoffman, a fire destroyed portions of a non-conforming restaurant and during the reconstruction, the restaurant was closed for more than a year (which was the statutory maximum discontinuance in the Village of Russell Gardens), but the court held that, under the circumstances, there was not any discontinuance; and

WHEREAS, the Appellant finds that the decisions in 149 Fifth Ave. and Hoffman support the conclusion that New York State courts accept a concept of tolling the discontinuity period in certain circumstances; and

WHEREAS, as to the application of tolling, the Appellant asserts that DOB states that it would seek to limit

the period of tolling to the time during which the building was being demolished, but the Appellant finds that such a determination would not be consistent with 149 Fifth Ave. and Hoffman; and

WHEREAS, the Appellant asserts that DOB should also recognize tolling for the approximately nine months during which the permits were under DOB’s review; and

WHEREAS, additionally, the Appellant asserts that from December 2008 until the 2010 review, the Current Double-Sided Sign existed pursuant to DOB’s approval and thus that period should be tolled; and

WHEREAS, the Appellant asserts that the property owner did not have any reasonable expectation to know that the sign needed to be returned to its original location to preserve the non-conforming rights; and

WHEREAS, the Appellant asserts that DOB’s action to begin the period of discontinuance clock after it advised the property owner that the removal was appropriate is contrary to fairness and equity and is not supported by the Zoning Resolution or the common law; and

WHEREAS, finally, the Appellant states that if DOB had commenced its audit sooner, there may have been an opportunity to correct the condition within the two-year discontinuance period; and

WHEREAS, the Appellant concludes that the right to an advertising sign is a significant property interest and DOB did not have any basis to extinguish those rights; and

WHEREAS, further, the Appellant asserts that DOB acted in bad faith by revoking the permit beyond the two-year discontinuance period at which time the Appellant no longer had the opportunity to correct any non-compliance with ZR § 52-83 and still meet the conditions of ZR § 52-61; and

### *Good faith reliance*

WHEREAS, the Appellant asserts that based on the Borough Commissioner’s approval, it removed the Former Wall Sign and spent approximately \$188,000 to install the Current Double-Sided Sign; and

WHEREAS, the Appellant cites to Pantelidis v. New York City board of Standards and Appeals, 10 Misc.3d 1077(A), (N.Y. Sup., 2005), Jayne Estates v. Raynor, N.Y.2d 417 (1968), and Ellentuck v. Klein, 51 A.D.2d 964 (1976) for the principle that a property owner should not suffer for relying upon a municipal permitting authority; and

WHEREAS, the Appellant states that it replaced the Former Wall Sign based on the assurances of the Borough Commissioner since the issue of the sign replacement was specifically addressed by preconsideration and reconsideration and the owner expended money in reliance on DOB’s review and approval; and

WHEREAS, the Appellant states that it took all necessary measures to ensure compliance with the law and was given approval by a high level official, and accordingly its good faith reliance was reasonable, referencing Woods v. Srinivasan, 932 N.Y.S.2d 821 (N.Y. Sup. Ct., Bronx Cty. 2011); and

### DOB’S POSITION

*Contrary to ZR §§ 52-83 and 52-61*

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WHEREAS, DOB's position is that the permits for the Current Sign Structure and the Current Double-Sided Sign were properly revoked because the non-conforming Former Wall Sign was moved to a new location and position and its degree of non-compliance was increased contrary to ZR § 52-83; and

WHEREAS, DOB states that ZR § 52-83 allows a non-conforming sign to be structurally altered, reconstructed, or replaced but that sign must remain in the same position and location and must not increase its degree of non-compliance, among other restrictions; and

WHEREAS, DOB's position is that the Borough Commissioner did not have the authority to accept the Current Double-Sided Sign as a permissible reconstruction of a grandfathered sign because it does not meet the restrictions set forth at ZR § 52-83 and that having recognized its mistake, DOB properly revoked the permits; and

WHEREAS, DOB notes that the Appellant changed the Former Wall Sign from a single sign with dimensions of 14'-0" high by 48'-0" wide on a building wall at a height of 35'-0" above curb level (perpendicular to Second Avenue between East 36<sup>th</sup> Street and East 37<sup>th</sup> Street) to the Current Sign Structure and Current Double-Sided Sign, which is double-sided with each sign measuring 14'-0" high by 48'-0" wide at a height ten feet above curb level (oriented diagonally on the corner of Second Avenue and East 36<sup>th</sup> Street); and

WHEREAS, DOB states that the Current Sign Structure and Current Double-Sided Sign may also be viewed as the construction of a new sign with a permit contrary to the Zoning Resolution which prohibits advertising signs in the district; and

WHEREAS, DOB states that in 1980, the Appellant held a lawfully issued permit for a non-conforming wall sign; however it did not have a right to move that sign to a new location and position on the lot and to create a new non-compliance by adding a second sign contrary to ZR § 52-83; and

WHEREAS, DOB states that its reconsideration approval and the permits for the Current Sign Structure and Current Double-Sided Sign were issued in error because they exceeded the limitations on permissible modifications to a non-conforming sign as specified in ZR § 52-83 and amounted to the construction of a new sign structure and sign in the absence of lawfully-issued permits; and

WHEREAS, as to whether adding a back-to-back sign increases the surface area of a non-conforming sign, DOB notes that the ZR § 12-10 definition of "Surface area (of a sign)," provides that "when two signs of the same shape and dimensions are mounted or displayed back to back and parallel on a single free-standing structural frame, only one of such signs shall be included in computing the total surface area of the two signs;" and

WHEREAS, DOB notes that the Appellant is correct that ZR § 52-83(b) prohibits an increase in the surface area of a non-conforming advertising sign and that the surface area of two back-to-back and parallel signs on a single sign

structure is computed by measuring only one of the two signs; and

WHEREAS, however, DOB states that even though the new sign face is not a prohibited increase in the non-conforming wall sign's surface area, the addition of a second advertising sign violates ZR § 52-83(a) because it is a new non-conformity; and

WHEREAS, further, DOB states that the back-to-back advertising signs double the extent to which the single wall sign by itself failed to comply with the Zoning Resolution because the Zoning Resolution does not treat a double-sided sign as one sign; and

WHEREAS, instead, DOB notes that the "surface area" definition recognizes that a "double-sided sign" is actually two signs displayed back-to-back and the addition of the second sign, while not an increase in surface area per ZR § 12-10, constitutes a new non-conformity; and

WHEREAS, DOB concludes that the prohibitions in paragraphs (a), (b), and (c) of ZR § 52-83 are imposed in addition to the requirement that non-conforming signs must only be altered, reconstructed, or replaced in the same location and position, which is not the case for the new signs at different elevations and at a different orientation and location on the site; and

WHEREAS, DOB states that, contrary to ZR § 52-61, the Former Wall Sign was discontinued for a period greater than two years and, thus, has lost its legal non-conforming status; and

WHEREAS, DOB notes that ZR § 52-61 terminates the right to a non-conforming use if the use is discontinued for a period of two years; and

WHEREAS, DOB notes that the permits for the Current Sign Structure and Current Double-Sided Sign were erroneously issued on June 20, 2008 and December 11, 2008, respectively, and the Appellant did not resume active operation of the lawful non-conforming sign use following July 8, 2008 when the building was demolished; and

WHEREAS, accordingly, DOB concludes that the Appellant has lost the right to a non-conforming sign use under ZR § 52-61 since the Former Wall Sign has been discontinued for a period greater than two years; and

### *Interpretation of Case Law*

WHEREAS, DOB distinguishes 149 Fifth Avenue Corp. v. Chin, 305 A.D.2d 194, 195 (1<sup>st</sup> Dept. 2003) on the basis that in 149 Fifth Ave., the court noted that the interruption in the sign's use was "compelled by legally mandated, duly permitted and diligently completed repairs;" and

WHEREAS, specifically, DOB notes that the sign was removed to allow for legally required façade inspection and repairs; and

WHEREAS, DOB notes that although the Former Wall Sign was removed pursuant to the required demolition of the 669 Second Avenue building, it was the Appellant's failure to maintain the building that caused the building to become unstable and require demolition rather than required routine maintenance at issue in 149 Fifth Ave.; and

WHEREAS, further, DOB states that the Appellant did

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not attempt to restore the Former Wall Sign once the demolition was completed and that rather than obtaining a permit for a single-sided sign at the same location as the Former Wall Sign, five months after the demolition, the Appellant obtained a permit for a two-sided sign at a lower height in a different location; and

WHEREAS, DOB notes that, unlike in 149 Fifth Ave., the Former Wall Sign use did not stop due to the Appellant's temporary need to remove the sign to perform required repairs but rather the sign was removed indefinitely due to the Appellant's own failure to maintain the building and decision to impermissibly alter and relocate the Former Wall Sign; and

WHEREAS, DOB cites to Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988) for the proposition that it is not estopped from enforcing the Zoning Resolution by the issuance of a permit or by laches, even where correction of the error leads to harsh results; accordingly, DOB states that the mistakenly approved reconsideration request approval, the erroneous issuance of permits, and DOB's enforcement of the law after rights to a non-conforming sign were lost by operation of ZR § 52-61 are not valid reasons to reinstate the permits; and

### *Effect of the Variance*

WHEREAS, DOB states that the Appellant cannot claim that the Current Sign Structure and Current Double-Sided Sign are a conforming use authorized by the Board's modification of its variance for the mixed-use building under BSA Cal. No. 280-01-BZ; and

WHEREAS, DOB states that it is not clear that the variance granted conforming status to the sign as there is no mention of the sign in the Board's decision or on the Board-approved plans; and

WHEREAS, DOB further states that the Current Sign Structure and the Current Double-Sided Sign do not conform to the approval by the Board in its letter modifying the variance and DOB does not have authority to issue a permit for a sign that is different from the one approved by the Board; and

### CONCLUSION

WHEREAS, the Board agrees with DOB and finds that the Current Double-Sided Sign does not meet the requirements of ZR §§ 52-83 and 52-61 and thus must be removed; and

WHEREAS, as to ZR § 52-83, the Board agrees with DOB that the Current Double-Sided Sign is not in the same position and location as the Former Wall Sign, contrary to ZR § 52-83 and that the addition of a second sign increases the degree of non-compliance, contrary to ZR § 52-83(a); and

WHEREAS, the Board notes that the Current Double-Sided Sign can be distinguished from the Former Wall Sign in several ways, including that (1) its location on Lots 26 and 27 (at the corner of Second Avenue and East 36<sup>th</sup> Street) is at least 27 feet to the south of the location of the Former Wall Sign on Lot 28 on the northern wall of the now-demolished 669 Second Avenue building (perpendicular to

Second Avenue between East 36<sup>th</sup> Street and East 37<sup>th</sup> Street); (2) its position is now a diagonal orientation with one sign facing northeast and one sign facing southwest as opposed to the Former Wall Sign which had one face, oriented to the north; (3) the Current Double-Sided Sign has two back-to-back signs as opposed to the Former Wall Sign with a single sign; and (4) the Current Double-Sided Sign is in a different position with relation to grade (ten feet above curb level versus 35 feet above curb level); and

WHEREAS, the Board is not persuaded by the Appellant's arguments that because position and location are not defined in the Zoning Resolution, that they have some broader meaning than is generally accepted; and

WHEREAS, further, the Board finds that by the plain meaning of the words, it is clear that a sign which was relocated to a different tax lot at least 27 feet away from its original setting cannot be considered to be in the "same location and position" as the previous non-conforming sign, as required by ZR § 52-83(c); and

WHEREAS, as to the question of whether adding a second side to an existing sign is permitted pursuant to ZR § 52-83, the Board agrees with DOB that, although the second sign does not increase the surface area per ZR § 12-10, it does increase the degree of non-conformance by adding a new second sign, which would not be permitted under the current zoning; and

WHEREAS, the Board finds that the ZR § 12-10 definition of surface area and the condition at ZR § 52-83(b) that surface area not be increased does not lead to the conclusion that the addition of a second sign meets the requirement at ZR § 52-83(a) that there not be a new *non-conformity* or an increase in the degree of *non-conformity* of such *sign*; and

WHEREAS, the Board does not find that there is a basis to ignore ZR § 52-83(a) and an increase in the degree of non-conformance just because ZR § 52-83(b) is met by the fact that there is no technical increase in surface area as provided by ZR § 12-10; and

WHEREAS, the Board does not find that reading ZR § 52-83 as DOB suggests renders any of the paragraphs meaningless; and

WHEREAS, in addition, the Board questions whether the Current Double-Sided Sign also increases the degree of illumination of the sign, contrary to ZR § 52-83(c); and

WHEREAS, specifically, the Board notes that the plans for the Current Double-Sided Sign indicate that the sign structure includes a row of four lights on each side of the structure (a total of eight lights) to illuminate the signs on both sides of the structure; and

WHEREAS, accordingly, the Board considers it likely that the Current Double-Sided Sign increases the degree of illumination contrary to ZR § 52-83(c), given that the plans reflect the illumination of two 14'-0" high by 48'-0" wide sign faces, while the Former Wall Sign only illuminated a single 14'-0" high by 48'-0" wide sign face; and

WHEREAS, as to ZR § 52-61, the Board agrees with DOB that the Former Wall Sign, which was removed on July 8, 2008 has been discontinued for a period greater than

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two years and thus its non-conforming status is not protected; and

WHEREAS, the Board distinguishes the discontinuance in the subject case from the facts in 149 Fifth Ave. and Hoffman; and

WHEREAS, first, as to 149 Fifth Ave., the Board does not find that the court's holding establishes a broad tolling provision and finds that, instead, the accepted tolling was limited to the facts in that case which involved the temporary removal of a longstanding sign during the course of "legally mandated, duly permitted and diligently completed repairs;" and

WHEREAS, the Board notes that in 149 Fifth Ave., the sign had to be removed in order to allow for the required façade repair but then was to be replaced after the completion of the repair work as distinguished from the subject case, where the Former Wall Sign had to be removed while the building was demolished, but was not replaced at the same location after the building's demolition; and

WHEREAS, the Board finds that a more narrow reading of 149 Fifth Ave. is warranted because the court specifically highlights the temporary removal of the sign during the period of the diligent completion of required maintenance; the Board does not find there to be a broad tolling principle or any application to the subject case, which did not include a temporary removal of the sign during a finite time period dictated by the amount of time required to perform legally mandated work; and

WHEREAS, in fact, the Board notes that even if the demolition work were parallel to the façade maintenance in 149 Fifth Ave., the time required to perform the legally-mandated building demolition was just a matter of months and, a reasonable reading of 149 Fifth Ave. would allow for the discontinuance only during the time of the demolition work and before the presumed reinstallation of the sign at the completion of the work; and

WHEREAS, the Board notes that there was no comparably finite period during which the subject sign was removed and after which it would be replaced pursuant to ZR § 52-83; and

WHEREAS, the Board finds that DOB's position that the two-year discontinuation applies in the subject case is consistent with the decision in 149 Fifth Ave.; and

WHEREAS, the Board notes that Hoffman arose outside of New York City and was not subject to the Zoning Resolution and the two-year discontinuance provision of ZR § 52-61 and that, further, that decision was in the context of a building with a non-conforming use, rather than the location of a sign and, thus, the analysis is not on point; and

WHEREAS, the Board finds that it is also worth noting that the in the Village of Russell Gardens, the discontinuance provision allowed for only a one-year period and that the governmental entities in Hoffman may have been persuaded that one year did not suffice to complete the reconstruction of a restaurant even as the work appears to have been performed diligently; and

WHEREAS, the Board finds the Appellant's invocation of the good faith reliance doctrine is misplaced as

the doctrine is limited to zoning variance applications and the courts have not extended the principle to interpretive appeal cases; and

WHEREAS, specifically, the Board notes that the limited precedent in case law for good faith reliance cases contemplate a zoning variance context and do not extend to a general appeal authority, such as that set forth at Charter Section 666(6); and

WHEREAS, the Board notes that the Appellant has indicated that it intends to file a variance application pursuant to ZR § 72-21 based on its assertion that it relied in good faith on DOB's approval and, thus, it will discuss the good faith reliance findings in the variance context; and

WHEREAS, the Board takes no position as to the merits of the proposed variance application; and

WHEREAS, as to the Appellant's assertion that DOB did not act in good faith when it revoked the permit beyond the two-year discontinuance period, the Board does not see any basis to conclude that DOB acted in bad faith; and

WHEREAS, the Board notes the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the issuance of building permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and agrees that DOB is not estopped from correcting an erroneous approval of a building permit (see Parkview Assoc.); and

WHEREAS, therefore, the Board finds that DOB properly revoked the permits due to the Appellant's failure to comply with ZR §§ 52-61 and 52-83.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated June 9, 2011 is hereby denied.

Adopted by the Board of Standards and Appeals, June 19, 2012.

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## 38-12-A & 39-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Birb Realty, owner.

SUBJECT – Application February 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R3-1 Zoning District.

PREMISES AFFECTED – 131 & 133 Aviston Street, 80' northwest corner of intersection of Aviston Street and Riga Street, Block 4683, Lot 22, 23, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

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## THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 13, 2012, acting on Department of Buildings Application Nos. 520084649 and 520088146, read in pertinent part:

The proposed one family dwelling & two family dwelling which does not front on a legally mapped street is contrary to Article 3, Section 36 of the General City Law, and therefore referred to the Board of Standards and Appeals for approval; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, and then to decision on June 19, 2012; and

WHEREAS, the applicant proposes to construct one single-family home and one two-family home which do not front on legally mapped streets, contrary to General City Law § 36; and

WHEREAS, by letter dated May 1, 2012, the Fire Department states that it has reviewed the plans and associated documents and has no objections; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated January 13, 2012, acting on Department of Buildings Application Nos. 520084649 and 520088146, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 5, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT proposed construction will comply with all requirements of the Lower Density Growth Management Area; and

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals June 19, 2012.

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## 180-11-A & 181-11-A

APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.

SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 34-57 & 34-59 107<sup>th</sup> Street, between 34<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 10, 2012, at 10 A.M., for decision, hearing closed.

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## 47-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.

SUBJECT – Application March 2, 2012 – Appeal to Department of Building’ determination that the proposed two-family building did not qualify for rear yard reduction pursuant §23-52. R3-1 zoning district.

PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86’ north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

For Administration: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for continued hearing.

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## 103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Lisa Orrantia, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for continued hearing.

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**REGULAR MEETING  
TUESDAY AFTERNOON, JUNE 19, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**183-11-BZ**

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for S.K.I. Realty, Inc., owner; Memorial Hospital for cancer and Allied Diseases, lessee.

SUBJECT – Application December 5, 2011 – Variance (§72-21) to allow the construction of a new outpatient surgical center (*Memorial Hospital for Cancer and Allied Diseases*), contrary to floor area ratio (§33-123); rear yard (§33-261) height and setback (§33-432); and curb cut (§13-142) regulations. C1-9/C8-4 zoning districts.

PREMISES AFFECTED – 1133 York Avenue, north side of east 61<sup>st</sup> Street, westerly from the corner formed by the intersection of the northerly side of East 61<sup>st</sup> Street and the westerly side of York Avenue, Block 1456, Lot 21, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Elena Aristova.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 2, 2012, acting on Department of Buildings Application No. 120801365, reads in pertinent part:

1. ZR Sec. 33-123: The proposal exceeds the maximum floor area ratio permitted for a community facility building in a C1-9 district as per this section.
2. ZR Sec. 33-261: The proposal does not provide a rear yard in the interior portion of the Zoning Lot in a C1-9 district as per this section.
3. ZR Sec. 33-432: The proposal does not comply with the maximum height of a front wall and the required front setback regulations applicable in a C1-9 district as per ZR Sec. 33-432 on both York Avenue and East 61st Street.
4. ZR Sec. 36-682: The proposal indicates two curb cuts for loading within 50' of an

intersection that do not comply with ZR Sec. 36-682; and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within a C1-9 zoning district and partially within a C8-4 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, and curb cuts, contrary to ZR §§ 33-123, 33-261, 33-432 and 36-682; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in the *City Record*, with a continued hearing on May 8, 2012, and then to decision on June 19, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 8, Manhattan, made a motion to approve the application, which did not pass; and

WHEREAS, residents of the adjacent residential cooperative building located at 440 East 62<sup>nd</sup> Street presented testimony in opposition to this application, and were represented by counsel throughout the hearing process (the "Opposition"); and

WHEREAS, a neighborhood resident also provided testimony in opposition to this application; and

WHEREAS, the Opposition made the following primary arguments: (1) the applicant failed to justify the requested waivers based on the unique physical conditions on the site; (2) the alleged programmatic needs lack the required specificity and the applicant is not entitled to rely on its programmatic needs to satisfy the finding under ZR § 72-21(a); (3) the DOB objection erroneously cites ZR § 36-682 rather than ZR § 13-142 in relation to curb cuts; (4) the applicant is required to make the finding under ZR § 72-21(b) despite its non-profit status; (5) the proposed building has significant light and air impacts on the adjacent building at 440 East 62<sup>nd</sup> Street; (6) the proposed building will create adverse traffic and parking impacts; and (7) the scheduling of the initial hearing did not comply with the Board's Rules of Practice and Procedure; and

WHEREAS, the application is brought on behalf of the Memorial Hospital for Cancer and Allied Diseases ("Memorial Hospital"), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject zoning lot is located on the northwest corner of the intersection of York Avenue and East 61st Street, with approximately 100'-0" of frontage on York Avenue and 115'-0" of frontage on East 61st Street; and

WHEREAS, the zoning lot has a total lot area of 11,547 sq. ft.; and

WHEREAS, approximately 87 percent of the zoning lot is located within a C1-9 zoning district and approximately 13 percent is located with a C8-4 zoning district; and

WHEREAS, the entire zoning lot is occupied by a four-story former automotive showroom building and is now used primarily for storage and accessory parking; and

WHEREAS, the applicant proposes to demolish the current building on the site and construct a 15-story community facility building with a floor area of 136,755 sq. ft. (11.84

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FAR), to be occupied by an outpatient surgical center for Memorial Hospital (the "Outpatient Surgical Center"); and

WHEREAS, the applicant notes that the main campus of Memorial Hospital and Sloan-Kettering Institute ("SKI"), known collectively as Memorial Sloan-Kettering Cancer Center ("MSK"), is centered around York Avenue and East 67<sup>th</sup> and 68<sup>th</sup> streets, with additional buildings located in Manhattan's East Side; and

WHEREAS, the applicant states that the proposed building will have the following non-compliances: (1) an FAR of 11.84 (the maximum permitted FAR for a community facility in the subject zoning districts is 10.0); (2) no rear yard (a rear yard with minimum dimensions of 20'-0" by 15'-0" is required); (3) a front wall height of approximately 203'-4" along East 61<sup>st</sup> Street and 217'-4" along York Avenue (a maximum front wall height of 85'-0" is permitted, with a setback of 20'-0" above a height of 85'-0" required along East 61<sup>st</sup> Street and a setback of 15'-0" above a height of 85'-0" required along York Avenue); and (4) two curb cuts located within 50'-0" of the intersection of York Avenue and East 61<sup>st</sup> Street (curb cuts are not permitted within 50'-0" of an intersection); and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site's high water table; (2) the presence of existing gas storage tank foundations below grade; (3) the site's location within an "Impact Area" for Category 3 hurricanes; and (4) the programmatic needs of MSK; and

WHEREAS, the applicant states that, due to the site's subterranean shoreline of the East River and a historic stream channel, groundwater on the site will be encountered at approximately elevation +1; and

WHEREAS, the applicant states that for any structures that are installed below the groundwater table, extensive permanent waterproofing would be necessary; and

WHEREAS, the applicant represents that its original intention was to construct a 10.0 FAR building with three full subsurface levels; and

WHEREAS, the applicant states that in order to construct three subsurface levels, it would be necessary to completely excavate the site from 45'-0" to 50'-0" below the York Avenue grade; and

WHEREAS, the applicant further states that given the extent of overburdened soils, depth of groundwater, environmental groundwater concerns, and proximity to the East River, dewatering the site for a long duration would not be feasible and temporary earth support systems would need to be watertight and capable of withstanding hydrostatic pressures; accordingly, the conditions on the site necessitate a foundation system of either secant wall piling or ground freeze walls; and

WHEREAS, the applicant states that secant wall piling would require closely-spaced, drilled, cast-in-place concrete columns that overlap to form a wall of tangent columns with

every other column reinforced with a steel core beam to carry vertical and horizontal loads; and

WHEREAS, the applicant further states that as an alternative or in addition to secant pile construction along the East 61<sup>st</sup> Street and York Avenue site perimeters, ground freezing may be a viable option to provide groundwater cut-off, with a traditional soldier pile system then installed to form a hybrid earth support; and

WHEREAS, the applicant states that ground freezing requires the installation of closely-spaced drilled-in cooling loops and cycling refrigerant for several months until a curtain of frozen ground is made; and

WHEREAS, the applicant represents that in either case, bedrock excavation would be required for a complying building with three subgrade levels and may entail extensive mechanical excavation by chipping with hydraulic hoe-ram/breakers, ripping, and/or rock drilling/splitting/blasting; and

WHEREAS, as to the existing gas storage tank foundations, the applicant states that the subject site was part of the York Avenue Manufactured Gas Plant operated by the Consolidated Gas Company and that, until 1950, a gas holding tank was located at the site; and

WHEREAS, the applicant states that a foundation that supported the gas tank, surrounded by a 1'-0" to 5'-0" thick caisson ring wall, remains at the site, beneath the existing building; and

WHEREAS, the applicant further states that the existence of the gas storage tank foundations, in conjunction with the high water table at the site, creates practical difficulties in constructing a complying building with three subgrade floors, because the necessary excavation would require the removal of the existing gas storage tank foundations, and the foundation work would have to incorporate both large-scale temporary and permanent systems (the secant wall piling or ground freeze walls) for preventing groundwater from entering the site; and

WHEREAS, the applicant submitted a cost estimate analysis of the excavation and foundation work required for the proposed building, with one subgrade floor to a depth of 15 feet below York Avenue grade, as compared to a complying building with three subgrade floors built to a depth of 50 feet below York Avenue grade, which reflects a construction premium of \$13.34 million for the excavation and foundation work associated with the complying building; and

WHEREAS, the applicant notes that the property is located within an "Impact Area" for Category 3 hurricanes in which significant tidal and storm inundation can be expected, as determined by the Sea, Lake, Overland Surges from Hurricanes ("SLOSH" maps) generated by the National Oceanic and Atmospheric Administration; and

WHEREAS, the applicant further notes that this designation is unique to the area since the Impact Area extends farther upland between East 61<sup>st</sup> and East 62<sup>nd</sup> streets than any other block to the north or south; and

WHEREAS, Con Edison, in a letter dated June 29, 2011, states that the applicant cannot locate electrical

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transformers in sidewalk vaults along the building but rather must locate the transformers not less than 22'-0" above datum; and

WHEREAS, as a result of Con Edison's determination, the electrical services will be located on the second floor rather than below grade, and that, while the footprint for the transformers is not counted as floor area, the circulation areas of the floor around the equipment is counted as floor area; and

WHEREAS, the applicant further notes that the site's location in an Impact Area also requires that the surgical services, which would normally be located in the two lower sub-cellar levels, be located above grade; and

WHEREAS, the applicant states that, due to the unique subsurface conditions and the location of the entire site in the Impact Area, only one cellar level will be constructed rather than three cellar levels; and

WHEREAS, the Opposition argues that the site's location within an Impact Area for Category 3 hurricanes according to the SLOSH Maps does not prohibit the construction of sub-cellars and therefore does not create any hardship with regard to below grade construction, and that the applicant has ignored the Mayor's Office of Emergency Management ("OEM") Hurricane Impact Maps which show that the site is located in a zone which would require complete evacuation of the site in the event of a Category 3 Hurricane regardless of the number of sub-cellars; and

WHEREAS, in response, the applicant acknowledges that the City does not use SLOSH Maps to prohibit or restrict development, but states that the City, Con Edison, and other public utility providers use them to serve as a blueprint for promoting best practices with regard to new development, and accordingly Con Edison has advised the applicant that it will not provide its service connections and transformers in typical sidewalk vault locations adjacent to the site or in on-site subgrade locations; and

WHEREAS, the applicant further responds that the OEM Maps referenced by the Opposition are utilized for evacuation purposes, and are not relevant to Con Edison's determination that the electrical transformers for the building must be located at least 22 feet above grade; and

WHEREAS, the applicant represents that, as a result of constructing only one cellar level, the spaces must be relocated above grade, resulting in an increase in FAR from the permitted 10.0 to the proposed 11.84; and

WHEREAS, the applicant represents that the requested waivers are also necessary in order to meet the programmatic needs of MSK, which include: (1) creating a short stay recovery unit to allow for the recovery of patients who do not require inpatient stay, but cannot be discharged as quickly as routine outpatient surgery patients; (2) shifting the majority of outpatient operative cases from the main campus to the proposed building, thereby freeing up space on the main campus for higher-intensity cases and critical post-surgical care and recovery; (3) fostering a robotic and laparoscopic surgery program by creating 12 state-of-the-art, appropriately sized operating rooms for specialized equipment and advanced procedures, with supporting pre-

operative assessment and post-anesthesia recovery space; (4) optimizing the facility to serve as an academic center through which MSK can train its oncology students, fellows and residents in outpatient surgical procedures; (5) accommodating clinical lab and pathology departments; and (6) providing administrative office space, ancillary support spaces and central sterile processing space; and

WHEREAS, as to the programmatic needs, the applicant represents that MSK is both a non-profit medical facility and a non-profit educational institution, with a mission to provide exceptional patient care, leading-edge research, and superb educational programs; and

WHEREAS, the applicant states that in 2010, MSK, one of the nation's 26 officially designated cancer centers, had more than 11,000 employees, including approximately 800 Memorial Hospital attending staff and 140 SKI members; and

WHEREAS, the applicant also states that in 2010, more than 24,000 patients were admitted to Memorial Hospital, and MSK accommodated more than 500,000 outpatient visits at its Manhattan and regional sites combined; and

WHEREAS, the applicant states that MSK is pioneering cancer surgical procedures by performing more sophisticated and complex surgical procedures in an ambulatory setting, which will allow patients to leave a facility within 23 hours rather than spending several nights recovering in a hospital; and

WHEREAS, the applicant states that the proposed Outpatient Surgical Center will be located within close proximity to MSK's main campus and will be devoted to further the effectiveness of advances in ambulatory surgery for cancer patients; and

WHEREAS, the applicant states that the design of the proposed building requires specific square footage, floor plate size, floor-to-ceiling heights and program adjacencies and connectivity to accommodate the required spaces, including operating rooms, specialized recovery rooms, medical laboratories, and special facilities for surgeon training and education; and

WHEREAS, the applicant states that complying with the required 20'-0" and 15'-0" setback at a height of 85'-0" would result in floor plates that would be smaller on the building's upper floors, which is at odds with the large contiguous floor plates needed for health care programmatic functionality and staffing efficiencies; and

WHEREAS, the applicant provided an analysis of an as-of-right building consisting of a 20-story hospital building with 115,429 sq. ft. of floor area (10.0 FAR) and a total height of approximately 334 feet (the "Complying Building"); and

WHEREAS, in response to concerns raised by the Opposition, and at the direction of the Board, the applicant also submitted an analysis of a lesser variance building which consists of a 15-story hospital building with 132,914 sq. ft. of floor area (11.51 FAR) with a complying rear yard (the "Lesser Variance Building"); and

WHEREAS, the applicant states that, due to the rear yard and height and setback regulations, the Complying Building provides five floors above grade with floor plates of approximately 11,200 sq. ft., then above them two floors

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of approximately 7,500 sq. ft., then four floors of approximately 6,000 sq. ft., and then nine floors of approximately 5,500 sq. ft.; and

WHEREAS, the applicant represents that this staggered envelope is at odds with health care planning, which strives for large contiguous floor plates for programmatic functionality as well as staffing efficiencies; and

WHEREAS, specifically, the applicant states that the Complying Building does not provide a sufficient number of large floor plates for the operating rooms on the upper floors, as only the third, fourth and fifth floors have large enough floor plates to accommodate four operating rooms and their required adjacent program areas, which compromises the Complying Building's connectivity for both patients and staff and requires an additional patient elevator which further reduces the amount of program space; and

WHEREAS, the applicant further states that the upper floors of the Complying Building, which are smaller due to the height and setback and rear yard regulations, contain too little usable space due to the high proportion of floor area necessarily dedicated to elevators and shafts, resulting in a loss of approximately 14,000 sq. ft. of usable program space as compared to the proposed building; and

WHEREAS, the applicant states that the upper floors of the Complying Building are not large enough for the proper siting of the medical laboratories, which would have to be located on the second lowest level of the building, thereby requiring the dedicated laboratory exhaust ductwork to pass through 21 floors to exit through the roof; and

WHEREAS, the applicant states that the upper floors of the Complying Building are similarly not large enough for the proper siting and design of patient floors, as the prep, post-anesthesia care unit, and short stay floors would have to be spread over eight floors (as opposed to three in the proposed building), which creates extreme inefficiencies for staffing and equipment; and

WHEREAS, the applicant represents that providing the required rear yard for the Complying Building takes a 20'-0" by 15'-0" notch out of each floor above the first floor of the building, resulting in the loss of rectangular symmetry and restricting the core elements that can be located against the north and west walls of the building, thereby forcing infrastructure elements such as shafts and electrical and electronic services into the center of the building where they will interfere with the locational and spatial requirements of the surgical suites; and

WHEREAS, the applicant states that the Lesser Variance Building similarly fails to meet the programmatic needs of MSK, in that it results in a net loss of 6,702 sq. ft., or seven percent, of program area and yields a net loss of three operating rooms and four patient rooms, which equates to a 25 percent loss of operating room capacity; and

WHEREAS, the applicant represents that the Lesser Variance Building therefore defeats the primary purpose of the building as a 12-operating room surgical facility, and results in 15 fewer surgical procedures per day, or 3,750

procedures per year, which is a significant loss to MSK's teaching and research programs; and

WHEREAS, the applicant further represents that the floor plates of the Lesser Variance Building also impose compromises on the clinical and non-clinical support functions on all floors and create shortfalls and/or losses of critical functions and adjacencies throughout the building that disrupt essential medical support to patients; and

WHEREAS, accordingly, the applicant concludes that both the Complying Building and the Lesser Variance Building fail to satisfy MSK's programmatic needs, as compliance with height and setback and rear yard requirements would seriously undermine MSK's mission objectives as a provider of cancer treatment, research investigator and educator for future doctors; and

WHEREAS, the applicant represents that the proposed building corrects the many significant deficiencies and inefficiencies found in the Complying Building, including: suitably sized operating rooms on the upper floors; location of medical laboratories closer to the operating room floors and reduction of space devoted to exhaust ductwork; increase in the number of patient rooms and concentration of the patient rooms on three floors rather than eight; efficient location of support areas; and elimination of a mechanical floor and one elevator; and

WHEREAS, the Opposition argues that the fact that the plans for the Lesser Variance Building are self-serving in that MSK claims that the lesser variance reduces the number of desired operating rooms from 12 to nine while the Complying Building provides the required 12 operating rooms on the same number of floors (three) and with identical floor plates; and

WHEREAS, in response, the applicant states that providing four operating rooms per floor on floors seven through nine of the Lesser Variance Building would result in the loss of necessary surgical support functions, and therefore only three operating rooms were placed on each of those floors; and

WHEREAS, the applicant states that an additional program element for the Outpatient Surgical Center is to provide for the smooth flow of patients' arrivals and departures, and that in order to meet this programmatic need the proposed building includes a patient drop off area, with vehicles entering the drop off area via a curb cut on York Avenue and exiting via a curb cut on East 61<sup>st</sup> Street; and

WHEREAS, the applicant states that the one-way flow through the drive-through will provide for a more efficient flow of vehicles than the Complying Building, which would require cars, vans, and cabs to pull over along East 61<sup>st</sup> Street and York Avenue to drop off or pick up their passengers, and the patients would need to walk to the Outpatient Surgical Center's entrance and return to the vehicles by foot, which would adversely affect the scheduling and operation of the facility and impede traffic flow along both streets adjoining the site; and

WHEREAS, the applicant states that the proposed curb cuts must be located within 50'-0" of the intersection of York Avenue and East 61<sup>st</sup> Street because locating the curb

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cuts more than 50'-0" from the intersection presents significant practical difficulties, including eliminating frontage needed to accommodate the building's lobby, loading berth, oxygen farm, and building egress; and

WHEREAS, the applicant represents that the drop-off area will permit a greater number of vehicles approaching the building to avoid the intersection of York Avenue and East 61<sup>st</sup> Street, and the applicant submitted an analysis prepared by its environmental consultant, which showed that the drop off would reduce the vehicle hours of delay by 11 percent and the southbound travel times on York Avenue by four percent; and

WHEREAS, the Opposition asserts that the DOB objection citing ZR § 36-682 regarding the two curb cuts was written in error because the proposed drop-off area is not related to loading, and that ZR § 13-142, which was cited in the original DOB objection sheet, is the controlling provision; and

WHEREAS, in response, the applicant states that it consulted with DOB on the proper zoning section and that DOB considers passenger drop-off and pick-up areas qualify as "loading," and that therefore, ZR § 36-682 was identified as the proper section by DOB's executive zoning specialist; and

WHEREAS, the applicant further states that by the Opposition's logic that ZR § 36-682 does not apply because the drop-off area is not related to loading, then ZR § 13-142 would be equally inapplicable because it applies to curb cuts for accessory parking, and there is no accessory parking on the site; and

WHEREAS, the Board notes that it defers to DOB's judgment in identifying the appropriate zoning objections that form the basis of an application before the Board; and

WHEREAS, the Opposition argues that the applicant has failed to make the findings under ZR § 72-21(a) because: (1) the applicant has not established that there are unique physical conditions that create hardship on the site; (2) the alleged programmatic needs lack sufficient specificity; and (3) MSK is not entitled to deference as to its programmatic needs under the Court of Appeals decision in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986) to satisfy the (a) finding; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant has not provided sufficient evidence to establish the need for the floor area waiver and has not provided any evidence of unique conditions that justify the rear yard, height and setback, and curb cut waivers, and therefore cannot satisfy the (a) finding under ZR § 72-21; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, engineer's reports, cost estimates, and other evidence, have sufficiently established that the subsurface conditions on the site, including the high water table and the existence of gas storage tank foundations, and the site's location in an "Impact Area" for Category 3 hurricanes create practical difficulties and unnecessary hardship in constructing sufficient below grade space to accommodate the necessary

floor area for the Outpatient Surgical Center in a complying building, thereby resulting in the need for the requested floor area waiver to provide such space above grade; and

WHEREAS, the Board notes that the applicant has made detailed submissions providing the required specificity about its program to establish that the requested waivers are necessary to satisfy its programmatic needs; and

WHEREAS, the Opposition argues that MSK is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board notes that MSK is an accredited teaching hospital which offers numerous educational and training programs, including graduate medical education, postdoctoral training, PhD & MD/PhD Education, Continuing Medical Education, and Continuing Nursing Education; and

WHEREAS, the applicant states that the proposed Outpatient Surgical Center will provide an academic, research, and training platform, and that surgical residents and fellows will be trained as surgical oncologists at the Outpatient Surgical Center; and

WHEREAS, New York Courts broadly construe educational uses to be those uses which are found on the campuses of educational institutions and are reasonably associated with an education purpose (see N.Y. Botanic Gdn. v. Bd. of Stds. and Apps., 91 N.Y.2d 413 (1998)); and

WHEREAS, the Board notes that although the proposed Outpatient Surgical Center will not be located directly on MSK's main campus, the subject location was chosen for its close proximity approximately six blocks from the main campus, and the research, training, and treatments offered at the Outpatient Surgical Center will clearly further MSK's educational purpose; and

WHEREAS, the Board notes that the Opposition has not provided any basis for distinguishing accredited teaching hospitals with significant educational and training programs from other educational institutions; and

WHEREAS, the Board further notes that it has reviewed many applications for hospitals seeking variances and recognizing that modern teaching hospitals are affiliated with universities and have staffs that include a significant number of residents, fellows, and interns; and

WHEREAS, accordingly, the Board finds that MSK is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and

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disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, furthermore, the Board finds that notwithstanding MSK's ability to rely on programmatic needs to satisfy the findings under ZR Sec. 72-21(a), the applicant has provided sufficient evidence to establish that there are unique physical conditions on the site to justify the requested zoning relief; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique physical conditions on the site, when considered in conjunction with the programmatic needs of MSK, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the applicant is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, specifically, the Board notes that ZR § 72-21(b) states: "this finding shall not be required for the granting of a variance to a non-profit organization," without exception; and

WHEREAS, accordingly, the Board does not agree with the Opposition's position that the applicant is subject to the (b) finding simply because the applicant submitted evidence of the site's unique subsurface conditions and a cost estimate relating to premium construction costs; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed building is consistent with the character of the surrounding neighborhood, which includes a mix of residential, commercial and institutional buildings, including, immediately to the west of the subject site, the Weill Cornell Medical College's Iris Cantor Women's Health Center and, along York Avenue from East 61<sup>st</sup> Street to the East 72<sup>nd</sup> Street, an institutional corridor of medical research and healthcare institutions; and

WHEREAS, as to the proposed floor area, the applicant states that the maximum permissible zoning floor area for residential and community facility uses may be increased by as much as 20 percent (to a maximum FAR of 12.0) through a qualifying plaza or arcade or through providing inclusionary housing; and

WHEREAS, the applicant notes that, pursuant to ZR §§ 37-80 and 33-14(b), it is entitled to a 2,502 sq. ft. floor area bonus (0.21 FAR) because it is providing an 834 sq. ft. arcade within the proposed building; therefore, the permitted FAR for the proposed building is 10.21; and

WHEREAS, the Board notes that the proposed building could have an as-of-right FAR of 12.0 under ZR §§ 37-80 and 33-14(b) if it provided a sufficient amount of arcade space to achieve the maximum 20 percent floor area bonus; accordingly, although the proposed building requires

a floor area waiver, the FAR of 11.84 is specifically contemplated by the Zoning Resolution as being compatible within the subject zoning district; and

WHEREAS, the applicant represents that the building's proposed height of 259'-6" will be consistent with the height of buildings in the surrounding neighborhood and shorter than a number of them, including, on the block to the south, a residential building with a height of 386'-0" and a proposed residential building of 328'-0"; and

WHEREAS, the Opposition submitted testimony which discussed the proposed building's impact on light and air on the adjacent residential cooperative located at 440 East 62<sup>nd</sup> Street; and

WHEREAS, the Board notes that 440 East 62<sup>nd</sup> Street contains lot line windows along its south façade, along the lot line of the subject property, and also has apartments with windows that only face the approximately 50-ft. by 50-ft. rear courtyard of 440 East 62<sup>nd</sup> Street; and

WHEREAS, the applicant notes that the Complying Building would rise to a total height of 336'-5", which is significantly higher than the proposed building; and

WHEREAS, the applicant states that the Complying Building would also be built along the lot line and would block the same lot line windows as the proposed building, and therefore providing a complying rear yard will not uncover any lot line windows affected by the proposed building and will not benefit the 440 East 62<sup>nd</sup> Street building's light in its rear yard; and

WHEREAS, the applicant represents that the purpose of the Zoning Resolution's various rear yard provisions are not to restrict adjoining zoning lots, but rather to assure that development on one's own zoning lot provides sufficient light and air to the residential occupants on that lot; and

WHEREAS, the applicant further represents that if the requested rear yard waiver is approved, the 440 East 62<sup>nd</sup> Street building's windows facing its rear yard will retain their status as providing legal light and air; and

WHEREAS, the applicant states that the Opposition has not submitted any evidence into the record to support its claim that the proposed building will have greater impacts on the light and air associated with the 440 East 62<sup>nd</sup> Street building's lot line windows, rear yard windows, and/or terraces and rooftops than the taller, similarly scaled Complying Building; and

WHEREAS, the applicant notes that the Weill Cornell Medical College building (the "Weill Cornell Building") immediately to the west of both the subject site and the rear yard of 440 East 62<sup>nd</sup> Street rises to a height of approximately 194 feet at the lot line; and

WHEREAS, the applicant provided diagrams showing that, because of the location and height of the Weill Cornell building to the west, a complying rear yard in the lesser variance scenario would have limited benefit in terms of light and air to the residents of 440 East 62<sup>nd</sup> Street; and

WHEREAS, specifically, the applicant states that the Weill Cornell Building is built on a through lot and has been positioned so as to occupy what could have been a rear yard

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providing daylight into adjacent properties' rear yards, including the site and the 440 East 62<sup>nd</sup> Street building;

WHEREAS, the applicant further states that, due to its location, the Weill Cornell Building presents an approximately 150-ft. tall blank wall for the entire boundaries of both the site and 440 East 62<sup>nd</sup> Street; and

WHEREAS, the applicant represents that as a result, any construction on the site, including the proposed building, the Complying Building, or the Lesser Variance Building, would block the lot line windows along the south façade of the 440 East 62<sup>nd</sup> Street building and significantly impact the light and air provided to the building's rear courtyard; and

WHEREAS, the Opposition contends that the proposed building will also result in adverse traffic and parking impacts; and

WHEREAS, in response, the applicant submitted a report from its traffic consultant stating that the number of vehicle trips generated by the proposed building is estimated to be less than the number of vehicle trips generated by the Complying Building because there will be fewer people (20 fewer employees) coming to the proposed building as a result of the inefficient layout of the Complying building which requires more staff; and

WHEREAS, the report further states that the curb cuts on York Avenue and East 61<sup>st</sup> Street will have minimal effect on traffic flow, and that the curb cut on York Avenue which serves as the entrance to the drop off area will help to maintain the curbside lane of York Avenue as a travel lane, thereby improving traffic flow as compared to the Complying Building; and

WHEREAS, the applicant notes that DOT reviewed the proposal and issued a memo dated June 7, 2012 stating that the proposed curb cuts would not create any significant adverse traffic and pedestrian impacts, subject to specific recommendations, including installing lane delineators on York Avenue to prevent left turns into the drop-off area, assigning MSK staff to monitor and ensure traffic flow, and working with the MTA to relocate a bus stop currently located at York Avenue between East 61<sup>st</sup> Street and East 62<sup>nd</sup> Street; and

WHEREAS, in response, the applicant revised its EAS to include these recommendations; and

WHEREAS, as to available parking in the area, the report submitted by the traffic consultant states that it conducted a survey for off-street parking facilities within a ¼-mile radius of the project site, and identified 21 public parking garages providing a total supply of 3,190 parking spaces with approximately 780 of these spaces remaining available during peak hours; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of MSK could occur on the existing

site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, as noted above, in addition to a complying scenario, the applicant submitted plans for a lesser variance scenario consisting of a 15-story hospital building with 132,914 sq. ft. of floor area (11.51 FAR), and with a complying rear yard; and

WHEREAS, the applicant concluded that the Lesser Variance Building results in a net loss of 6,702 sq. ft. of program area and the loss of three operating rooms and four patient rooms, and therefore fails to meet the programmatic needs of MSK; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow MSK to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, at the outset of the hearing process, the Opposition objected to the Board's scheduling of the initial hearing on March 27, 2012, because it was not in compliance with Section 1-06(g) of the Board's Rules of Practice and Procedure, which requires that:

After the examiner(s) have determined the application to be substantially complete, the applicant shall be notified by the Executive Director, on the appropriate form, of the date set for the public hearing, which shall be at least thirty (30) days after the mailing of said notice; and

WHEREAS, specifically, the Opposition argues that the Board sent the required hearing notice to the applicant on March 5, 2012, less than 30 days prior to the March 27, 2012 public hearing; and

WHEREAS, the Board notes that the purpose of the rule cited by the Opposition is to ensure that the applicant has sufficient notice that the application has been placed on the hearing calendar, as well as sufficient time to send the notification forms to the relevant entities and affected property owners at least 20 days prior to the hearing date; and

WHEREAS, because the applicant did not object to receiving the hearing notice less than 30 days prior to the hearing date, and because the applicant satisfied the requirement to send the notification forms to the relevant entities and affected property owners at least 20 days prior to the hearing date, the Board determined that there was no harm caused by not notifying the applicant 30 days prior to the hearing date, and accordingly exercised its authority under Section 1-14(g) of the Rules of Practice and Procedure to waive the requirement that the applicant be notified 30 days prior to the hearing date; and

WHEREAS, the project is classified as an Unlisted

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action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”); and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, a restrictive designation for Hazardous Materials was placed on the subject parcel by the Department of City Planning as part of the 1129-33 York Avenue Rezoning & Parking Garage action (CEQR# 04DCP056M); and

WHEREAS, the applicant has submitted a May 2012 Remedial Action Plan (“RAP”) and a site-specific Construction Health and Safety Plan (“CHASP”) to the NYC Office of Environmental Remediation (“OER”) under the restrictive declaration requirement; and

WHEREAS, based upon the above, the Board finds that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, partially within a C1-9 zoning district and partially within a C8-4 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, and curb cuts, contrary to ZR §§ 33-123, 33-261, 33-432 and 36-682, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received May 15, 2012’ – twenty-five (25) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 136,755 sq. ft. (11.84 FAR); a maximum front wall height of approximately 203’-4” along East 61<sup>st</sup> Street and 217’-4” along York Avenue; a total height of approximately 258’-11” ; no rear yard; and two curb cuts located within 50’-0” of the intersection of York Avenue and East 61<sup>st</sup> Street, in accordance with the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the applicant will work with the MTA to ensure the existing nearside bus stop located on York Avenue at East 61<sup>st</sup> Street is moved to the far side and where it would not interfere with turning vehicles emanating from the FDR Drive;

THAT the applicant will ask permission from DOT to install lane delineators and/or rubber stanchions along the center line of York Avenue between East 61<sup>st</sup> and East 62<sup>nd</sup> Streets to prohibit left turns from northbound York Avenue into the internal patient drop-off/pick-up entrance, and the applicant will be responsible for the cost of such delineation, installation and maintenance;

THAT the applicant will provide dedicated staff to manage traffic flow and queuing within the patient drop-off/pick up area and monitor that no vehicle spillback should occur onto York Avenue and that no driveway would be blocked; the time limit to disembark and pick-up patients will not cause vehicles to queue in the drop-off area and effect its operation and impede pedestrian and vehicular traffic on York Avenue; idling/standing/parking/patient-related pick-ups/drop-offs on York Avenue should not be allowed; entry into the drop-off/pick-up area will always be via York Avenue and the exit via East 61<sup>st</sup> Street; mirrors and warning devices should be installed at the driveways to ensure pedestrians safety/visibility as vehicles exit; and the applicant will be responsible for costs associated with designing, installation and maintenance;

THAT one month prior to the hospital’s operation, the applicant will notify DOT’s Manhattan Borough Commissioner and Manhattan Borough Engineer offices and request a field investigation to determine the appropriate signage which would prohibit on-street deliveries on East 61<sup>st</sup> Street and on York Avenue and any other signage it deems fit to maintain safety and traffic flow on city streets;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2012.

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## **40-12-BZ**

### **CEQR #12-BSA-078R**

APPLICANT – Francis R. Angelino, Esq., for Helm Equities Richmond Avenue, LLC, owner; Global Health Clubs, LLC, lessee.

SUBJECT – Application February 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Global Health Clubs*). C2-1 zoning district.

PREMISES AFFECTED – 2385 Richmond Avenue, Richmond Avenue and East Richmond Hill Road, Block 2402, Lot 1, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

APPEARANCES –



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For Applicant: Francis R. Angelino.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated January 23, 2012, acting on Department of Buildings Application No. 500630025, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C2-1 zoning district. This use is contrary to 32-10 of the New York City Zoning Resolution and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-1 zoning district, the operation of a physical culture establishment (PCE) on the first and second floors of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2012, and then to decision on June 19, 2012; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chairperson Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the southeast corner of the intersection formed by Richmond Avenue and Nome Avenue, within a C2-1 zoning district; and

WHEREAS, the site is an irregular corner lot with 357.74 feet of frontage on Richmond Avenue, and 150 feet of frontage on Nome Avenue, and contains a total lot area of 160,865 sq. ft.; and

WHEREAS, the applicant proposes to occupy 10,559 sq. ft. of floor area on portions of the first and second floors of a two-story commercial building; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA078R, dated January 28, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C2-1 zoning district, the operation of a physical culture establishment on portions of the first and second floors of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 16, 2012”-(3) sheets, and *on further condition*:

THAT the term of this grant will expire on June 19, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

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THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2012.

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## 42-12-BZ

### CEQR #12-BSA-079M

APPLICANT – Sheldon Lobel, P.C., for 158 West 27<sup>th</sup> Street, LLC, owner; 158 West 27<sup>th</sup> Fitness Group, LLC, lessee.

SUBJECT – Application February 16, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on a portion of the cellar, first and second floors of the existing twelve-story building at the premises. M1-6 zoning district.

PREMISES AFFECTED – 158 West 27<sup>th</sup> Street, located on the south side of 27<sup>th</sup> Street, between Avenue of the Americas and Seventh Avenue, Block 802, Lot 75, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard Lobel and Joshua Rinesmith.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 6, 2012, acting on Department of Buildings Application No. 120940296, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10 is contrary to ZR 42-10 and must be referred to the

Board of Standards and Appeals pursuant ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within M1-6 zoning district, the legalization of a physical culture establishment (PCE) in portions of the cellar, first, and second floors of a 12-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2012, and then to decision on June 19, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 27<sup>th</sup> Street between Avenue of the Americas and Seventh Avenue, within an M1-6 zoning district;

WHEREAS, the site has a total lot area of 8,305 sq. ft. and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE will occupy 11,788 sq. ft. of floor area on portions of the first and second floors, with an additional 2,804 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the applicant states that the hours of operation for the PCE will be 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since February 18, 2012, without a special permit; and

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WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between February 18, 2012 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA079M, dated January 31, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-6 zoning district, the operation of a physical culture establishment on portions of the cellar, first, and second floor of a 12-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 23, 2012” – Seven (7) sheets and *on further condition*:

THAT the term of this grant shall expire on February 18, 2022;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT all massages must be performed by New York State licensed massage therapists;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2012.

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## 49-12-BZ

### CEQR #12-BSA-084Q

APPLICANT – Sheldon Lobel, P.C., for Lattera, Inc., owner; Powerhouse Gym “FLB”, Inc., lessee.

SUBJECT – Application March 2, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Powerhouse Gym*) in a portion of an existing one-story commercial building, C2-2(R5B zoning district.

PREMISES AFFECTED – 34-09 Francis Lewis Boulevard, northeast corner of Francis Lewis Boulevard and 34<sup>th</sup> Avenue, Block 6077, Lot 1, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Richard Lobel and Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 1, 2012, acting on Department of Buildings Application No. 42048597, reads in pertinent part:

“Physical Culture or Health Establishments: in C1-8X, C1-9, C2, C4, C5, C6, M1, M2. or M3 District, the Board of Standards and Appeals may permit physical culture or health establishments as Defined in Section 12-10.” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C2-2 (R5B) zoning district, the legalization of a physical culture establishment (PCE) in portions of the cellar and first floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, and then to decision on June 19, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 11, Queens, recommends approval of this application based on the condition that the applicant agree to a five year term; and

WHEREAS, the Queens Borough President

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recommends approval of this application based on the Community Board's condition that the applicant agree to a five year term; and

WHEREAS, a representative of the Auburndale Improvement Association provided oral testimony requesting a five-year term for the PCE; and

WHEREAS, the subject site is located on the northeast side of Francis Lewis Boulevard, within a C2-2 (R5B) zoning district; and

WHEREAS, the site is a corner lot with approximately 101 feet of frontage on Francis Lewis Boulevard and approximately 108 feet of frontage on 34<sup>th</sup> Avenue and has a total lot area of 10,156 sq. ft.; and

WHEREAS, the site is occupied by a one-story commercial building; and

WHEREAS, the PCE will occupy 6,239 sq. ft. of floor area on a portion of the first floor, with an additional 4,736 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Powerhouse Gym; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:00 a.m. to 12:00 a.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since December 1, 2006, without a special permit; and

WHEREAS, accordingly, the Board finds it appropriate to limit the term of the grant to five years; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA084Q, dated March 2, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 (R5B) zoning district, the operation of a physical culture establishment at portions of the cellar and first floor of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 2, 2012" – Three (3) sheets and "Received June 12, 2012" – One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 19, 2017;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT all massages must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 19, 2012.

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## 21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for decision, hearing closed.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Othel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for adjourned hearing.

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## 93-11-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district.

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

**ACTION OF THE BOARD** – Laid over to July 17, 2012, at 1:30 P.M., for adjourned hearing.

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## 104-11-BZ

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.

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## 165-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 17, 2012 at 1:30 P.M., for continued hearing.

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## 192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik, Barbara Cohen, Beata Kozbusky, Alex Veksler and Jakov Saric.

For Opposition: Kim Zangrillo, John Zangrillo and John Lufemina.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.

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## 5-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Aaron Herzog, owner.

SUBJECT – Application January 12, 2012 – Variance (§72-21) for the addition of a third floor to an existing two family residential building, contrary to front yard requirements (§23-146(c)), front yards and side yard requirement (§23-146(d)). R5 zoning district/Borough Park.

PREMISES AFFECTED – 812 Dahill road, northwest corner of Dahill Road and 19<sup>th</sup> Avenue, Block 5445, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

**ACTION OF THE BOARD** – Laid over to July 17, 2012 at 1:30 P.M., for continued hearing.

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## 12-12-BZ & 110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre A. Carson, Robert Alperstein, Borys Hayda, John Sore and Daniel Lane.

For Opposition: David Gruber of CB 2, Marc Chalom, Dan Aquilante, Tobi Bergmay, Jay Goldstein and Carey Ascenzo.

**ACTION OF THE BOARD** – Laid over to August 7, 2012 at 1:30 P.M., for continued hearing.

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## 31-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application February 8, 2012 – Special Permit (§73-50) to seek a waiver of rear yard requirements (§33-292) to permit the construction of commercial building. C8-3 zoning district.

PREMISES AFFECTED – 280 West 155<sup>th</sup> Street, corner of Frederick Douglas Boulevard and West 155<sup>th</sup> Street, Block 2040, Lot 48, 61 & 62, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 17, 2012 at 1:30 P.M., for decision, hearing closed.

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## 58-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shlomo Dabah, owner.

SUBJECT – Application March 15, 2012 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and opens space (§23-141); side yards (§23-461); less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3960 Bedford Avenue, west side of Bedford Avenue between Avenue R and Avenue S, block 6830, Lot 30, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for decision, hearing closed.

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## 70-12-BZ

APPLICANT – Francis R. Angelino, Esq., for C.S. Edward Kang, owner; Aqua Studio NY LLC, lessee.

SUBJECT – Application March 23, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Aqua Studio NY LLC*). C6-2A zoning districts.

PREMISES AFFECTED – 78 Franklin Street, between Broadway and Church Street, Block 175, Lot 4, Borough of Manhattan.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Francis R. Angelino.

For Opposition: Patricia Mccobb, William Borr and Ingrid Wiegand.

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for continued hearing.

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## 76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of

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Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #15K**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**\*CORRECTION**

This resolution adopted on June 3, 2008, under Calendar No. 14-08-BZ and printed in Volume 93, Bulletin Nos. 22-23, is hereby corrected to read as follows:

**14-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Elie Zeitoune, owner.

SUBJECT – Application January 8, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary side yards (§23-46) and rear yard (§23-47) in an R5 zoning district.

PREMISES AFFECTED – 1958 East 13<sup>th</sup> Street, west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T, Block 7291, Lot 108, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson, and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 24, 2007, acting on Department of Buildings Application No. 310051172, reads in pertinent part:

“The proposed enlargement to existing home is contrary to ZR Sections ZR 23-46 (side yard) and ZR 23-47 (rear yard) and therefore requires a special permit pursuant to ZR 73-622;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on March 11, 2008, after due notice by publication in *The City Record*, with continued hearings on April 8, 2008 and May 13, 2008, and then to decision on June 3, 2008; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 13<sup>th</sup> Street, between Avenue S and Avenue T; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with floor area of 3,105.5 sq. ft. (0.80 FAR); and

WHEREAS, the premises is within the boundaries of a

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designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 3,105.5 sq. ft. (0.80 FAR), to 4,934.6 sq. ft. (1.24 FAR); the maximum floor area permitted is 5,000 sq. ft. (1.25 FAR); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the enlargement of the home is not located within 20'-0" of the rear lot line; and

WHEREAS, the proposed enlargement will (1) maintain the existing non-complying side yard with a width of 4'-0" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required) and (2) provide a second side yard with a width of 9'-0"; and

WHEREAS, at hearing, the Board raised concerns about whether a sufficient portion of the existing home would be retained; and

WHEREAS, in response, the applicant identified which portions of the existing home would be retained; and

WHEREAS, at hearing, the Board also directed the applicant to (1) confirm that the proposed building complies with height and setback requirements and (2) re-design the light wells, which appear to encroach into the side yard; and

WHEREAS, in response, the applicant (1) provided an axiomatic diagram, which reflects that the height and setback of the proposed home fit within the permitted sky exposure plane envelope and (2) re-designed the light wells to reflect a maximum permitted width of 1'-6"; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side and rear yards, contrary to ZR §§ 23-46 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 29,

2008"--(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area of the attic shall be limited to 1,190.6 sq. ft.;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a total floor area of 4,943.6 sq. ft. (1.24 FAR), side yards with minimum widths of 4'-0" and 9'-0", and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 3, 2008.

**\*The resolution has been revised to correct the 12<sup>th</sup> WHEREAS, which read: ...side yard with a width of 13'-0"; now reads: ...side yard with a width of 9'-0". Corrected in Bulletin No. 26, Vol. 97, dated June 27, 2012.**



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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 97, Nos. 27-29

July 19, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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New Case Filed Up to July 10, 2012

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**196-12-A**

26 Ocean Avenue, west side of Ocean avenue, 492.25' north of Rockaway Point Boulevard, Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14**. Proposed alteration and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District R4 district.

-----

**197-12-A**

1-37 12th Street, East of Gowanus Canal between 11th Street and 12th Street., Block 10007, Lot(s) 172, Borough of **Brooklyn, Community Board: 7**. Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. M1-2/M2-1 district.

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**198-12-BZ**

933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74th and East 75th Streets., Block 1389, Lot(s) 25, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the construction of an enlargement to the existing buildings, which would contain Use Group 6 retail and Use Group 2 residential use, and require modification of various bulk and supplementary use regulations. C5-1(MP),R8B zon C5-1(MP),R8B district.

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**199-12-BZ**

1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street., Block 3467, Lot(s) 5, Borough of **Brooklyn, Community Board: 1**. Application pursuant to ZR 72-21 to construct a self storage facility that exceeds the maximum permitted floor area regulations. C8-1 and R6 zoning districts. C8-1 and R6 district.

-----

**200-12-BZ**

154 Hester Street, southwest corner of Hester Street and Elizabeth Street., Block 204, Lot(s) 16, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the enlargement of the existing UG4 house of worship contrary §109-121 (floor area), §109-122 (lot coverage) and §54-31 (enlargement of non-complying building). C6-2 zoning district. C6-2G district.

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**201-12-A**

112 Alberta Avenue, at southeast corner of intersection of Wild Avenue and Alberta Avenue, Block 2643, Lot(s) 10, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family home that does not front a legally mapped street contrary to General City Law Section 36. R3A Zoning District R3A district.

-----

**202-12-BZ**

1030 Southern Boulevard, east side of Southern Blvd., 264' south of intersection of Westchester Ave. and Southern Blvd., Block 2743, Lot(s) 6, Borough of **Bronx, Community Board: 2**. Application for special permits to allow a physical culture establishment within an existing commercial building and corresponding extension of the physical culture establishment use 25' into an R7-1 zoning district. C4-4/R7-1 district.

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**203-12-A**

442 West 36th Street, east of southeast corner of 10th Avenue and 36th Street, Block 733, Lot(s) 60, Borough of **Manhattan, Community Board: 4**. Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. C2-5 /HY Zoning District C2-5/HY district.

-----

**204-12-A**

18-24 Bruckner Boulevard, East of Southeast corner of Lincoln Avenue and Bruckner Boulevard, Block 2308, Lot(s) 5, Borough of **Bronx, Community Board: 01**. Appeal challenging the Department of Buildings' determination that signs are not entitled to continued legal status as advertising sign. M1-5 /R8A/MX-1 Zoning District. M1-5/R8A/MX-1 district.

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**205-12-A**

355 Major Deegan Expressway, bounded by Exterior street, Major Deegan Expressway to the east, Harlem River to the west, north of the Madison Avenue Bridge, Block 2349, Lot(s) 46, Borough of **Bronx, Community Board: 1**. Appeal from the determination of the Department of Buildings that the subject sign is not entitled to non-conforming use status as an advertising sign. R7-2 /C2-4 (HRW) Zoning District. R7-2/C2-4(HRW) district.

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**206-12-BZ**

2373 East 70th Street, between Avenue W & Avenue X, Block 8447, Lot(s) 67, Borough of **Brooklyn, Community Board: 18**. Application filed for special permit in legalizing a discontinuation of a one car garage within an existing one family home. Converting the space into a recreational area in conjunction with same. R3-1 district.

-----

**207-12-BZ**

164 Reid Avenue, west of Reid Avenue, south of Janet Lane, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. The legalization of a reconstruction of a single family not fronting on a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of an existing private disposal system is contrary to the Department of Buildings policy. R R4 district.

-----

**208-12-A**

17 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 123, Borough of **Staten Island, Community Board: 1**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

-----

**209-12-BZ**

910 Manhattan Avenue, north east corner of Greenpoint Avenue and Manhattan Avenue., Block 2559, Lot(s) 4, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district. C4-3A district.

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**212-12-BZ**

38-03 Bell Boulevard, East side of Bell Boulevard distant 50.58 feet south of the intersection formed by Bell Boulevard and 38th Avenue, Block 6238, Lot(s) 18, Borough of **Queens, Community Board: 11**. Special Permit (§73-36) to permit a physical culture establishment in the cellar and first floor of the existing commercial building. C2-2/R6B zoning district. C2-2/R6B district.

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**216-12-A**

19 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 122, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**217-12-A**

21 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 121, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**218-12-A**

23 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 120, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

-----

**219-12-A**

25 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 119, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**220-12-A**

27 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 118, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**221-12-A**

29 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 117, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**222-12-A**

31 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 116, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**223-12-A**

33 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 115, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

-----

**224-12-A**

35 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 114, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**225-12-A**

37 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 113, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**226-12-A**

39 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 112, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**227-12-A**

41 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 111, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**228-12-A**

43 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 110, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to

General City Law Section 36. R3A Zoning District. R3A district.

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**229-12-A**

45 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 109, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**230-12-A**

47 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 108, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**231-12-A**

49 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 107, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**232-12-A**

51 McGee Lane, North side of McGee Lane - east of Harbor Road and West of Union Avenue, Block 01226, Lot(s) 106, Borough of **Staten Island, Community Board: 01**. Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District. R3A district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JULY 24, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 24, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**301-85-BZ**

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment application to add several additional permitted use group 6 retail uses to a previously approved and extended in term BSA Variance Resolution, pursuant to 301-85-BZ, that permitted several specific use group 6 retail uses.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**71-93-BZ**

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application January 23, 2012 – Amendment to a previously granted Variance (§72-21) to allow construction of 242.6 sq. ft. one story addition to eastern face of existing house which does not comply with the front yard requirements (§23-45(a); floor area and lot coverage (§23-141(b)). R2A zoning district.

PREMISES AFFECTED – 153-01 Bayside Avenue, 308.25' west of 154<sup>th</sup> Street, between 29<sup>th</sup> Avenue and Bayside Avenue, Block 4835, Lot 25, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**336-98-BZ & 337-98-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11 to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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**238-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application May 25, 2012 – Request for rehearing pursuant to Section 1-10(e) of the Board's Rules of Practice and Procedure, as there has been a material change in the proposed plans.

PREMISES AFFECTED – 876 Kent Avenue, west side of Kent Avenue, 91' north of Myrtle Avenue, Block 1897, Lot 56, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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**APPEALS CALENDAR**

**149-05-A**

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a Certificate of Occupancy. On May 16, 2006 BSA issued a resolution granting an extension of time to complete construction which expired on May 1, 2007. R2 Zoning District.

PREMISES AFFECTED – 32-09 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**155-12-BZY**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 511 Property LLC, owner.

SUBJECT – Application May 11, 2012 – Extension of time (§11-332) to complete construction of a minor development commenced under the previous zoning.

PREMISES AFFECTED – 511 Ninth Avenue, southwest corner of Ninth Avenue and West 39<sup>th</sup> Street (block bounded by West 38<sup>th</sup> Street and 10<sup>th</sup> Avenue), Block 736, Lot 33, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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# CALENDAR

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**JULY 24, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 24, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**10-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.

SUBJECT – Application January 18, 2012– Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling that does not provide two required front yards (§23-45) and side yard (ZR §23-461). R-5 zoning district.

PREMISES AFFECTED – 114-01 95<sup>th</sup> Avenue, northeast corner of 95<sup>th</sup> Avenue and 114<sup>th</sup> Street, Block 9400, Lot 37, Borough of Queens.

**COMMUNITY BOARD #9Q**

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**13-12-BZ**

APPLICANT – Georgios Georgopoulos, for Abumuktadir Rahman, owner.

SUBJECT – Application January 20, 2012 – Variance (§72-21) to permit the legalization of the bulk and parking waivers associated with the existing use of the building as a mosque. (*Astoria Islamic Center*), the proposal also includes an enlargement of the first and second floors and the addition of a third floor. The proposal is contrary to front yard (§24-34), side yard (§24-35), and required parking spaces (§25-31). R5B zoning district.

PREMISES AFFECTED – 22-21 33<sup>rd</sup> Street, east side of 33<sup>rd</sup> Street, 200' south of corner formed by the intersection of Ditmars Boulevard and 33<sup>rd</sup> Street, Block 832, Lot 22, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**65-12-BZ**

APPLICANT – Lewis E. Garfinkel, for Yisroel Brodt, owner.

SUBJECT – Application March 20, 2012 – Special Permit (§73-622) for the enlargement of existing single family home contrary to floor area and open space (ZR §23-141(a)); side yard (ZR §23-461(a)) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1140 East 28<sup>th</sup> Street, west side of East 28<sup>th</sup> Street, 313' south of Avenue K, Block 7627, Lot 62, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**105-12-BZ**

APPLICANT – Zaskorski & Notaro Architects, for Alan Mucatel, owner.

SUBJECT – Application April 17, 2012 – Variance (§72-21) to permit the installation of a new elevator contrary to front yard and lot coverage regulations. R5 zoning district.

PREMISES AFFECTED – 450 Castle Hill Avenue, southeast corner of Castle Hill and Lacombe Avenues, Block 3511, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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**107-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Third Avenue Tower LLC, owner; Blink 600 Third Avenue Inc, lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-36) to allow physical culture establishment (*Blink Fitness*) within existing commercial building. C5-3m C5-2.5 and R8B zoning district.

PREMISES AFFECTED – 600/18 Third Avenue, aka 159/65 E. 39<sup>th</sup> Street, aka 150/2 East 40<sup>th</sup> Street, west side of 3<sup>rd</sup> Avenue between E. 39<sup>th</sup> Street and E. 40<sup>th</sup> Street, Block 895, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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**116-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Spring Swinehart et al., owner; Exceed Fitness, LLC, lessee.

SUBJECT – Application April 24, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Exceed Fitness*). C1-9 zoning district.

PREMISES AFFECTED – 1477 Third Avenue, between E. 83<sup>rd</sup> and E. 84<sup>th</sup> Streets, Block 1529, Lot A, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 10, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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**SPECIAL DECISION**

NYC Board of Standards and Appeals  
**RULES OF PRACTICE & PROCEDURE**  
SUBJECT – NYC Board of Standards and Appeals repeals  
and re-promulgates its Rules of Practice and Procedure,  
Chapter 1, Title 2 of the Rules of the City of New York.  
**ACTION OF THE BOARD** – Granted.  
THE VOTE TO GRANT –  
Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0  
Adopted by the Board of Standards and Appeals, July  
10, 2012.

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**SPECIAL ORDER CALENDAR**

**635-57-BZ**  
APPLICANT – Francis R. Angelino, Esq., for Landmark  
115 East 69<sup>th</sup> Street, L.P, owner.  
SUBJECT – Application March 1, 2012 – Extension of  
Term (§11-411) of a previously approved variance  
permitting the continued use of the cellar, first and second  
floors of a five-story building for general office use (UG6)  
which expired on January 26, 2012; waiver of the rules.  
R8B zoning district.  
PREMISES AFFECTED – 115 East 69<sup>th</sup> Street, north side,  
185’ east of Park Avenue, Block 1404, Lot 8, Borough of  
Manhattan.  
**COMMUNITY BOARD #8M**  
APPEARANCES –  
For Applicant: Lyra J. Altman.  
**ACTION OF THE BOARD** – Application granted on  
condition.  
THE VOTE TO GRANT –  
Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0  
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of the term for a previously granted variance for  
the continued use of the cellar, first floor, and second floor  
of a five-story building for general office use (Use Group 6),

which expired on January 26, 2012; and  
WHEREAS, a public hearing was held on this  
application on June 5, 2012, after due notice by publication  
in *The City Record*, and then to decision on July 10, 2012; and  
WHEREAS, Community Board 8, Manhattan,  
recommends approval of this application; and  
WHEREAS, the premises and surrounding area had  
site and neighborhood examinations by Vice-Chair Collins,  
Commissioner Hinkson, and Commissioner Ottley-Brown;  
and  
WHEREAS, the subject site is located on the north side  
of East 69<sup>th</sup> Street, between Park Avenue and Lexington  
Avenue, within an R8B zoning district; and  
WHEREAS, the Board has exercised jurisdiction over  
the site since March 9, 1959 when, under the subject calendar  
number, the Board granted a variance to permit the use of the  
first floor of the building as a legation for the Republic of  
Sudan to the United Nations, and the second floor as an office,  
within a residence use district, for a term of 15 years; and  
WHEREAS, subsequently, the grant was amended and  
the term extended at various times; and  
WHEREAS, on September 25, 1979, the Board granted  
an amendment to permit the change of use on the first and  
second floors to general office use (Use Group 6); and  
WHEREAS, subsequently, the grant was amended and  
the term extended at various times; and  
WHEREAS, most recently, on June 4, 2002, the Board  
granted a ten-year extension of term, which expired on January  
26, 2012; and  
WHEREAS, the applicant now seeks an additional ten-  
year extension of the term; and  
WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and  
WHEREAS, based upon the above, the Board finds  
that the requested extension of term is appropriate with  
certain conditions as set forth below.  
*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*,  
and *amends* the resolution, dated March 9, 1959, so that as  
amended this portion of the resolution shall read: “to extend  
the term for ten years from January 26, 2012, to expire on  
January 26, 2022; *on condition* that the use and operation of  
the site shall comply with the BSA-approved plans  
associated with the prior grant; and *on further condition*:  
THAT the term of the grant will expire on January 26,  
2022;  
THAT the above condition will appear on the certificate  
of occupancy;  
THAT all conditions from prior resolutions not  
specifically waived by the Board remain in effect; and  
THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(Alt. No. 101488061)  
Adopted by the Board of Standards and Appeals July 10,  
2012.



# MINUTES

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**313-77-BZ**

APPLICANT – Goldman Harris LLC, for Gilsey House, owner.

SUBJECT – Application April 13, 2012 – Amendment to a variance (§72-21) which allowed the conversion of a manufacturing building to residential use. The proposal is to construct a one-story penthouse and roof deck enlargement within the approved envelope. M1-6 zoning district.

PREMISES AFFECTED – 1200 Broadway, southeast corner of West 29<sup>th</sup> Street and Broadway, Block 831, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

APPEARANCES –

For Applicant: Eugene Travers.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting the conversion and enlargement of an eight-story building from manufacturing use to residential use; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in *The City Record*, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, chose not to comment on the subject application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Broadway and West 29<sup>th</sup> Street, in an M1-6 zoning district; and

WHEREAS, the site is occupied by an eight-story residential building with a floor area of 99,204 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since December 13, 1977 when, under the subject calendar number, the Board granted a variance to permit the proposed conversion of an eight-story manufacturing building with a floor area of 99,204 sq. ft. to residential use, and the construction of a 13,375 sq. ft. two-story penthouse enlargement, contrary to ZR § 42-00; and

WHEREAS, the applicant states that the subject building was converted to residential use in accordance with the Board’s grant, but that the two-story enlargement was never constructed; and

WHEREAS, the applicant now requests an amendment to permit the construction of a smaller 420 sq. ft. one-story enlargement entirely within the approved penthouse envelope, which will increase the floor area of the building to 99,624 sq. ft.; and

WHEREAS, the applicant notes that the proposed

enlargement will occupy less than four percent of the penthouse envelope previously approved by the Board and will have a height of 15’-6”, rather than the approved 18’-6”; and

WHEREAS, the applicant further notes that the proposed enlargement will consist of a bedroom and bathroom connected to the unit below and will not increase the number of dwelling units within the building; and

WHEREAS, the applicant states that, subsequent to its conversion to residential use, the building was designated as an individual landmark by the Landmarks Preservation Commission (“LPC”); and

WHEREAS, the applicant represents that the proposed amendment will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC approving the proposed enlargement, dated June 22, 2010; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 13, 1977, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the previously-approved plans; *on condition* that all work substantially complies to drawings marked ‘Received June 1, 2012’ – (5) sheets and ‘June 11, 2012’-(2) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 120354963)

Adopted by the Board of Standards and Appeals, July 10, 2012.

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**64-96-BZ**

APPLICANT –Vassalotti Associates Architects, LLP, for Michael Koloniaris and Nichol Koloniaris, owners.

SUBJECT – Application January 10, 2012 – Extension of Term for the continued operation of a UG16B automotive repair shop (*Meniko Autoworks, Ltd.*) which expired on December 11, 2011. C1-2/R3A zoning district.

PREMISES AFFECTED – 148-20 Cross Island Parkway, East south of 14<sup>th</sup> Avenue, Block 4645, Lot 3, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

# MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for an automobile repair facility, which expired on December 11, 2011; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in *The City Record*, with continued hearings on May 1, 2012 and June 5, 2012, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the site is a triangular-shaped lot located on the south side of the Cross Island Parkway service road, between 148<sup>th</sup> Street and 149<sup>th</sup> Street, within a C1-2 (R3A) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956 when, under BSA Cal. No. 437-56-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on December 11, 1991; and

WHEREAS, on February 25, 1997, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station with accessory parking for cars awaiting service, for a term of ten years, which expired on December 11, 2001; and

WHEREAS, most recently, on September 10, 2002, the Board granted a ten-year extension of term and an amendment to permit the change of use from a gasoline service station to an automobile repair facility with accessory parking for more than five vehicles in an open area, which expired on December 11, 2011; and

WHEREAS, the applicant now seeks an additional extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping on the site and raised concerns about the outdoor hydraulic lift located in front of the repair building which was not shown on the previously-approved plans; and

WHEREAS, in response, the applicant submitted photographs reflecting that landscaping has been provided along the western lot line and the hydraulic lift has been disassembled and removed from the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate

with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens and amends* the resolution, dated February 25, 1997, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from December 11, 2011, to expire on December 11, 2021; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received January 10, 2012’-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on December 11, 2021;

THAT the site will be maintained free of debris and graffiti;

THAT there be no parking of automobiles on the sidewalk;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (Alt. No. 401288940 )

Adopted by the Board of Standards and Appeals, July 10, 2012.

## 359-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.

SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.

PREMISES AFFECTED – 5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Block 5649, Lot 38, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Elizabeth Bennett.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance legalizing the existing sixth floor in a Use Group 3 religious

# MINUTES

school/yeshiva building; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with a continued hearing June 5, 2012, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of 14<sup>th</sup> Avenue and 50<sup>th</sup> Street, within an R6 zoning district; and

WHEREAS, the site is occupied by a seven-story (including penthouse) community facility building with a floor area of 69,350 sq. ft. (5.77 FAR), which is used as a private, Orthodox Jewish religious school for females ranging from pre-Kindergarten to 12<sup>th</sup> grade (the "Yeshiva"); and

WHEREAS, the adjacent site to the west, on Lot 35, is occupied by a new five-story school building which is also owned by the applicant; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board granted a variance to legalize the creation of the sixth floor within the envelope of the existing building, which did not comply with the zoning regulations for floor area ratio; and

WHEREAS, the applicant now requests an amendment to legalize the one-story glass enclosure of an existing areaway adjacent to the subject building; and

WHEREAS, the applicant states that the areaway is located along the northern side lot line adjacent to the new five-story school building on Lot 35, and the areaway is approximately 10'-0" wide by 61'-4" deep; and

WHEREAS, the applicant further states that the enclosure of the areaway creates approximately 672 sq. ft. of additional floor area, increasing the total floor area from 69,350 sq. ft. (5.77 FAR) to 70,022 sq. ft. (5.82 FAR), and increases the lot coverage from 94.4 percent to 100 percent; and

WHEREAS, the applicant notes that the enclosure of the areaway has created a covered one-story shared entrance way from 50<sup>th</sup> Street that is utilized by both the subject building and the adjacent school for ingress and egress; and

WHEREAS, the applicant represents that the entrance way is necessary to meet the programmatic needs of the Yeshiva because it serves as a separate entrance for women during religious school-related functions attended by both genders, in accordance with principles of the Orthodox Jewish faith; and

WHEREAS, the applicant notes that the entrance way also provides sheltered handicapped access by means of a ramp; and

WHEREAS, the applicant represents that the enclosure has minimal impacts on the exterior appearance and building envelope of the subject building, and no other changes to the interior layout or operations of the Yeshiva are proposed; and

WHEREAS, at hearing, the Board directed the applicant to clarify that the egress for the subject building and the

adjacent building on Lot 35 comply with all applicable egress requirements; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the egress for both buildings complies with all applicable Building Code requirements, and the shared use of the enclosed areaway for the third required means of egress for both buildings is permitted; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 26, 2002, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work substantially complies to drawings marked 'Received May 22, 2012' – Fourteen (14) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 320235964)

Adopted by the Board of Standards and Appeals, July 10, 2012.

## 339-04-BZ

APPLICATION – Eric Palatnik, P.C., for Kramer and Wurtz, Inc., owner.

SUBJECT – Application January 17, 2012 – Extension of Term (§11-411) of a previously granted variance which permits an automotive service station (UG 16B) which expires on June 4, 2012. R3-1 zoning district.

PREMISES AFFECTED – 157-30 Willets Point Boulevard, south side of the intersection formed by Willets Point Boulevard and Clintonville Street. Block 4860, Lot 15. Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for an automobile service station, which expired on June 4, 2012; and

WHEREAS, a public hearing was held on this

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application on May 8, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the condition that planters be placed around the perimeter of the site; and

WHEREAS, the site is located on the south side of the intersection of Willets Point Boulevard and Clintonville Street, within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 26, 1929 when, under BSA Cal. No. 205-29-BZ, the Board granted a variance to permit the construction of a gasoline service station, for a term of two years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; until its expiration on June 4, 2002; and

WHEREAS, on May 10, 2005, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station with accessory uses, and permitted the construction of a new canopy over the existing motor fuel dispense islands, for a term of ten years, which expired on June 4, 2012; and

WHEREAS, the applicant now seeks an additional extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to provide planters in accordance with the request of the Community Board, and raised concerns about the trucks located on the site; and

WHEREAS, in response, the applicant submitted photographs of the planters which have been placed on the site, and states that all of the trucks on the site are awaiting service and there is no truck parking provided on the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated May 10, 2005, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 4, 2012, to expire on June 4, 2022; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received January 17, 2012’-(2) sheets and ‘June 6, 2012’-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on June 4, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not

specifically waived by the Board remain in effect; and

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB App. No. 401976723)

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 175-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Zacker Oil Corp., owner; Leemits Petroleum, Inc., lessee.

SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously approved gasoline service station (*Getty*) which expired on March 29, 2012. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, northeast corner of Baycheser and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

## COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on March 29, 2012; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the premises is located on the northeast corner of Baychester Avenue and Tillotson Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 18, 1956 when, under BSA Cal. No. 492-56-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station with minor auto repairs, office and sales, car washing and lubrication in a residence and retail use district, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times, until its expiration on December 18, 2001; and

WHEREAS, on March 29, 2012, under the subject

# MINUTES

calendar number, the Board granted a reinstatement of the prior Board approval of an automobile service station with accessory uses (Use Group 16) in an R4 zoning district, pursuant to ZR § 11-411, for a term of ten years; and

WHEREAS, a condition of the grant was that a certificate of occupancy be obtained by March 29, 2012; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained by the stipulated date due to delays in locating the contractors and professionals necessary to sign-off old applications relating to the installation of the station's overhead fire suppression system; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated March 29, 2011, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to July 10, 2013; *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a new certificate of occupancy will be obtained by July 10, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB App. No. 220074693)

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 433-61-BZ

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.  
SUBJECT – Application November 28, 2012 – Extension of Term (§11-411) of a variance which permitted a one story and mezzanine retail building, contrary to use regulations; Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street, between Quentin Road and Avenue R. Block 6798, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for decision, hearing closed.

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## 365-79-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for 89-52 Queens LLC, owner.

SUBJECT – Application February 21, 2012 – Amendment of a variance (§72-21) which allowed a hospital to be built contrary to bulk regulations. The amendment would convert the hospital building to commercial, community facility and residential uses. R6B/C1-2 zoning district.

PREMISES AFFECTED – 90-02 Queens Boulevard, Hoffman Drive and Queens Boulevard, block 2857, Lot 36, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath, David Guff and Nicholas Scire-Chianti.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for continued hearing.

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## 25-89-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for St. John's Garage LLC, owner.

SUBJECT – Application February 23, 2012 – Amendment of a variance (§72-21) which allowed for an accessory parking garage to be built for a hospital. The amendment seeks to permit the accessory parking to be used for community facility, commercial and residential uses. R6B/C1-2 zoning district.

PREMISES AFFECTED – 58-04 Hoffman Drive, 58<sup>th</sup> Avenue and Hoffman Drive, Block 2860, Lot 16, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath, David Cuff and Nicolas Scire-Chianti.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for continued hearing.

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## 271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

### COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for adjourned hearing.

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## 337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application April 26, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2012. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415-17 East 92<sup>nd</sup> Street, northeast corner of the intersection formed by East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Bennett.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for decision, hearing closed.

## 37-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Vornado Forest Plaza, LLC, owner; 2040 Forest Avenue Fitness Group LLC, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Planet Fitness*) which expired on November 9, 2003; Waiver of the Rules. C8-1 zoning district.

PREMISES AFFECTED – 2040 Forest Avenue, south side of Forest Avenue between Heaney Avenue and Van Name Avenue, Block 1696, Lot 8, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for decision, hearing closed.

## 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78’-8.3”northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for deferred decision.

## 51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application February 4, 2010 – Amendment of a variance (§72-21) which permitted a Physical Culture Establishment and a dance studio (Use Group 9), contrary to use regulations. The amendment seeks to enlarge the floor area of the PCE; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2011; Waiver of the Rules. C1-2/R2 zoning district.

PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188<sup>th</sup> and 189<sup>th</sup> Streets, Block 7266, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for decision, hearing closed.

## 112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman by Eugene Langsam, owners.

SUBJECT – Application October 12, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a two story and cellar (UG4) synagogue (*Bnai Shloima Zalman*) which expired on September 11, 2011. R-2 zoning district.

PREMISES AFFECTED – 1089-1093 East 21<sup>st</sup> Street, between Avenue I and Avenue J, Block 7585, Lot 21 & 22, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for decision, hearing closed.

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## 128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Lot 31, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 180-11-A & 181-11-A

APPLICANT – Eric Palatnik, P.C., for Eran Yousfan, owner.

SUBJECT – Application November 30, 2011 – An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 34-57 & 34-59 107<sup>th</sup> Street, between 34<sup>th</sup> and 37<sup>th</sup> Avenues, Block 1749, Lot 60 (Tent. Lot #s 60 & 61), Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Appeals granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of two attached four-story (including penthouse) three-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, with continued hearings on June 5, 2012 and June 19, 2012, and then to decision on July 10, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens, made a motion to approve this application which did not pass, and raised the following concerns: (1) the owner continued to build after the expiration of the permits; (2) the owner constructed up to the property line, obstructing the neighbors' windows and creating a potential safety risk; (3) the proposed buildings do not provide parking; (4) the proposed buildings are not

compatible with the surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of 107<sup>th</sup> Street, between 34<sup>th</sup> Avenue and 37<sup>th</sup> Avenue, in an R5 zoning district; and

WHEREAS, the site consists of Lot 60 (Tentative Lots 60 and 61) and has 40 feet of frontage on 107<sup>th</sup> Street, a depth of 95 feet, and a total lot area of 3,800 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two attached four-story (including penthouse) three-family homes (the "Buildings"); and

WHEREAS, the subject site is currently located within an R5 zoning district, but was formerly located within an R6B zoning district; and

WHEREAS, the Buildings comply with the former R6B zoning district parameters; and

WHEREAS, however, on March 24, 2009 (the "Enactment Date"), the City Council voted to adopt the North Corona 2 Rezoning, which rezoned the site to R5, as noted above; and

WHEREAS, the Buildings do not comply with the R5 zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the Board further notes that New Building Permit Nos. 402280385-01-NB and 402280394-01-NB were issued on May 31, 2006 (the "New Building Permits"), authorizing the development of two attached three-family homes pursuant to R6B zoning district regulations; and

WHEREAS, the Board notes that, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Enactment Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permits pursuant to ZR § 11-332 within 30 days of their lapse on March 24, 2011, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated February 23, 2012, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Buildings prior to the

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Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that as of the two year anniversary of the Enactment Date, the owner had completed the following: 100 percent of site preparation work; 100 percent of excavation; and 100 percent of the foundation work for each of the Buildings; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: construction contracts, concrete pour tickets, an affidavit from the construction manager; and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, as to the Community Board's concerns regarding work performed after the expiration of the permits, the applicant acknowledges that work continued at the site after the two year anniversary of the Enactment Date, but states that DOB did not issue any violations for work without a permit; and

WHEREAS, the Board notes that any work performed after the two year anniversary of the Enactment Date cannot be considered for vesting purposes; accordingly, only the work performed as of the two year anniversary of the Enactment Date has been considered; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount

of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that as of the two year anniversary of the Enactment Date, the owner expended \$201,958, including hard and soft costs and irrevocable commitments, out of approximately \$407,000 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, accounting tables, copies of cancelled checks, and invoices; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$153,500 for the work performed at the site as of the two year anniversary of the Enactment Date; and

WHEREAS, the applicant further states that the owner paid an additional \$48,458 in soft costs related to the work performed at the site as of the two year anniversary of the Enactment Date; and

WHEREAS, thus, the expenditures as of the two year anniversary of the Enactment Date represent approximately 50 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, the lots would have to be completely reconfigured to conform to the new minimum lot size, yard, and parking requirements in the R5 zoning district, and the existing foundations could not be re-used for complying buildings; and

WHEREAS, the applicant represents that compliance with the new zoning would reduce the project from two three-family buildings to two two-family buildings with widths of 18 feet and 13 feet, in order to accommodate the four required parking spaces and provide the required front and side yards; and

WHEREAS, the applicant submitted a cost estimate from a real estate broker stating that compliance with the R5 zoning would result in a monthly rental loss of



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approximately \$6,000 as compared to the R6B buildings; and

WHEREAS, the applicant represents that the entire project would have to be redesigned, and submitted a cost estimate from its architect stating that the cost of redesigning the buildings and preparing the necessary documentation would be approximately \$30,000; and

WHEREAS, the applicant also submitted a proposal from the contractor estimating the cost of replacing the existing foundations with foundations for R5 compliant buildings would be approximately \$135,000; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any conforming construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in response to the Community Board's concerns regarding construction up to the property line, the applicant states that the subject applications were approved by DOB and that DOB conducted an audit of the New Building Permits and as of August 2, 2011, all objections raised in the audit have been cured except for an objection pertaining to the subject vesting application; and

WHEREAS, as to the remaining concerns raised by the Community Board, the applicant states that the Buildings comply with the former R6B zoning district regulations, and that findings related to neighborhood character are not part of the vested rights analysis; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises as of the two year anniversary of the Enactment Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402587848-01-NB and 402587857-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55,

Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for deferred decision.

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## 155-11-A

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 10 A.M., for deferred decision.

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## 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for adjourned hearing.

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## 17-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Richard and Michelle Kourbage, owners.

SUBJECT – Application January 24, 2012 – Proposed building is not fronting a mapped street, contrary to § 36 General City Law and in the bed of a mapped street, contrary to Art. §35 of the General City Law. Private disposal system in the bed of a mapped street contrary to Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 409 Seabreeze Walk, north side of Seabreeze Walk, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretha Popa.

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## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24,  
2012, at 10 A.M., for decision, hearing closed.

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## 18-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point  
Cooperative Inc., owner; Dennis Dorizas, lessee.

SUBJECT – Application January 24, 2012 – Proposed  
building is not fronting a mapped street, contrary to §36  
General City Law. R4 zoning district.

PREMISES AFFECTED – 377 Bayside Avenue, Block  
16340, Lot 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretha Popa.

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24,  
2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING

**TUESDAY AFTERNOON, JULY 10, 2012**

**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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## ZONING CALENDAR

### 107-11-BZ

#### CEQR #12-BSA-007K

APPLICANT – Sheldon Lobel, P.C., for Congregation  
Yeshiva Bais Yitzchok, owners.

SUBJECT – Application August 3, 2011 – Variance (§72-  
21) to permit the enlargement of a synagogue (*Congregation  
Yeshiva Bais Yitzchok*) contrary to the bulk requirements for  
community facility buildings. R4-1 zoning district.

PREMISES AFFECTED – 1643 East 21<sup>st</sup> Street, east side of  
21<sup>st</sup> Street between Avenue O and P, Block 6768, Lot 84,  
Borough of Brooklyn.

#### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on  
condition.

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough  
Commissioner, dated July 7, 2011, acting on Department of  
Buildings Application No. 320333590 reads, in pertinent part:

Proposed floor area and lot coverage contrary to  
ZR 24-11.

Proposed wall height and sky exposure plane  
contrary to ZR 24-521.

Proposed front yard contrary to ZR 24-34.

Proposed side yards contrary to ZR 24-35.

Proposed rear yard contrary to ZR 24-36.

Proposed distance between required window and  
side lot line and rear lot line contrary to ZR 24-  
651; and

WHEREAS, this is an application for a variance pursuant  
to ZR § 72-21 to permit, on a site within an R4-1 zoning  
district, the enlargement of an existing building occupied by a  
synagogue (Use Group 4) and Rabbi's apartment, which does  
not comply with the underlying zoning district regulations for  
lot coverage, height and setback, front yard, side yards, rear  
yard, and distance between windows and lot lines, contrary to  
ZR §§ 24-11, 24-521, 24-34, 24-35, 24-36 and 24-651; and

WHEREAS, a public hearing was held on this  
application on April 3, 2012, after due notice by publication

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in *The City Record*, with continued hearings on May 15, 2012 and June 12, 2012, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of Congregation Yeshiva Bais Yitzchok (the "Congregation"), a non-profit religious entity; and

WHEREAS, the subject site is located on the east side of East 21<sup>st</sup> Street, between Avenue O and Avenue P, within an R4-1 zoning district; and

WHEREAS, the subject lot has a width of 40 feet, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a legal non-complying three-story 5,760 sq. ft. (1.7 FAR) building occupied by a synagogue at the cellar and first floors and a Rabbi's residence on the second and third floors; and

WHEREAS, the existing synagogue building has the following pre-existing non-complying parameters: a lot coverage of 70 percent (55 percent is the maximum permitted); a front yard with a depth of 5'-5" (a front yard with a minimum depth of 15'-0" is required); a side yard with a width of 4'-10" along the northern lot line and no side yard along the southern lot line (two side yards with a minimum width of 8'-0" each are required); a rear yard with a depth of 14'-0" (a rear yard with a minimum depth of 30'-0" is required); and a minimum distance between windows and lot lines of 4'-10 1/2" line (a minimum distance of 20'-0" is required between windows and lot lines); and

WHEREAS, the applicant proposes to enlarge the existing building to create a four-story building with the following non-complying parameters: a floor area of 11,967 sq. ft. (2.99 FAR) (the maximum permitted floor area is 8,000 sq. ft. (2.0 FAR)); a lot coverage of 94 percent (the maximum permitted lot coverage is 55 percent); a wall height of 47'-0" (the maximum permitted wall height is 35'-0"); a front yard with a depth of 5'-5" (a front yard with a minimum depth of 15'-0" is required); no side yards (two side yards with a minimum width of 8'-0" each are required); no rear yard at the first and second floor and a rear yard with a depth of 20'-0" above the second floor (a rear yard with a minimum depth of 30'-0" is required); and a minimum distance between windows and lot lines of 4'-10 1/2" line (a minimum distance of 20'-0" is required between windows and lot lines); and

WHEREAS, the applicant originally proposed to construct a four-story building with a floor area of 12,234 sq. ft. (3.06 FAR), with no rear yard above the second floor; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted a revised proposal which provided a rear yard above the level of the second floor and reduced the floor area of the building to 11,967 sq. ft. (2.99 FAR); and

WHEREAS, because the proposed building does not comply with the bulk regulations of the underlying zoning district, the subject variance is requested; and

WHEREAS, the proposal provides for the following uses: (1) a social hall, mikvah, men's lobby, women's lobby, and a warming kitchen at the cellar level; (2) a synagogue and lobby at the first floor; (3) a women's balcony, lobby, and accessory religious educational room at the second floor; (4) a Rabbi's study, accessory office, library, and Rabbi's residence at the third floor; and (5) a Rabbi's residence at the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the congregation of approximately 110 families and allow for future growth; (2) to provide necessary support services for the synagogue; and (3) to provide a residence for the synagogue's Rabbi; and

WHEREAS, the applicant states that the congregation currently has a membership of 110 families, and anticipates the addition of approximately 20 families over the next ten years; and

WHEREAS, the applicant represents that it anticipates approximately 50 congregants will attend each weekday prayer session, and approximately 225 congregants will attend services on the Sabbath and holidays; and

WHEREAS, the applicant states that the growth of the congregation has led to overcrowded and uncomfortable conditions, particularly on Friday night and Saturday morning services as well as during the Jewish holidays, and the current building neither provides adequate space for the present needs of the synagogue nor accommodates for the future growth of the congregation; and

WHEREAS, the applicant represents that the requested waivers are also required to provide necessary support services for the synagogue which are absent or deficient in the existing building; and

WHEREAS, specifically, the applicant states that the yard and floor area waivers will enable the Congregation to provide new prayer and synagogue space and improved circulation space, including a women's balcony, a mikvah, new stairs to the women's balcony, new educational and administrative space, an enlarged Rabbi's residence, and improved common facilities such as bathrooms, closets, and separate men's and women's lobbies; and

WHEREAS, as for the enlarged Rabbi's residence, the applicant represents that the need for the additional space is twofold: (1) the Rabbi's family has grown significantly over the years, and his family, with the addition of grandchildren, regularly visits for extended stays; and (2) the Rabbi plays a central role as a "counselor" in the community, and many congregants seek the Rabbi's advice on a wide range of issues, and the current building does not provide the appropriate and discreet space in which to meet with community members; and

WHEREAS, the Board acknowledges that the synagogue, as a religious institution, is entitled to significant

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deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant states that the surrounding area is characterized by a variety of residential buildings in addition to several mixed residential and commercial uses; and

WHEREAS, the applicant represents that the properties along the subject block front and across East 21<sup>st</sup> Street include several six and seven-story apartment buildings with 70 plus units and FARs in excess of 5.0; and

WHEREAS, the applicant submitted a streetscape reflecting that there are a number of buildings to the south of the site along the subject block front, as well as several buildings directly across from the site on the west side of East 21<sup>st</sup> Street, which are significantly larger than the proposed building; and

WHEREAS, specifically, the applicant provided a table analyzing the floor area and height of the buildings along East 21<sup>st</sup> Street between Avenue O and Avenue P, which reflects that there are at least five buildings with an FAR greater than the proposed 2.99 FAR, and at least three buildings with a height greater than the proposed 47'-0"; and

WHEREAS, the applicant also submitted two letters of consent from the adjacent neighbors on Lots 82 and 86; and

WHEREAS, at hearing, the Board raised concerns about the size of the enlarged Rabbi's residence; and

WHEREAS, in response, the applicant states that the proposed building relocates the Rabbi's residence from the second and third floor to the third and fourth floor, and that the actual proposed enlargement of the residential space in the building is only 424 sq. ft., which constitutes an increase in floor area of only 14 percent; and

WHEREAS, as to the rear yard, the applicant states that it is providing a rear yard with a depth of 20'-0" above the level of the second floor and notes that 20'-0" rear yards are commonplace throughout the nearby R2 zoning district pursuant to the special permit under ZR § 73-622; and

WHEREAS, ZR § 24-33 provides a rear yard exemption for a community facility building located within a residence district, allowing the first floor, or up to a height of 23'-0" of the building, to encroach into the rear yard as a permitted obstruction; and

WHEREAS, the Board notes that, although the rear yard exemption does not apply to the second floor, the height of the subject building (27'-0") within the 20'-0" rear yard area is similar to the height allowed as a permitted obstruction (23'-0"); and

WHEREAS, at the direction of the Board, the applicant analyzed a lesser variance scenario which provided a rear yard with a depth of 30'-0" above the level of the second floor; and

WHEREAS, the applicant represents that with a 30'-0" rear yard the residential component becomes even smaller than it presently is, and certain important facility and Rabbi-related uses must be removed from the residential floors, which compromises the already "tightly-designed" cellar level; accordingly, a lesser variance scenario with a 30'-0" deep rear yard would not be able to accommodate the Congregation's programmatic needs; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, originally proposed to construct a four-story synagogue with a floor area of 12,234 sq. ft. (3.06 FAR), and with no rear yard above the second floor; and

WHEREAS, at the direction of the Board, the applicant revised its plans to reduce the size of the building to 11,967 sq. ft. (2.99 FAR) and provide a rear yard with a depth of 20'-0" above the level of the second floor; and

WHEREAS, the applicant also analyzed a scenario providing a rear yard with a depth of 30'-0" above the level of the second floor, which was unable to meet the programmatic needs of the Congregation; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Congregation the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under

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ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA007K, dated August 3, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R4-1 zoning district, the enlargement of an existing building occupied by a synagogue (Use Group 4) and Rabbi's apartment, which does not comply with the underlying zoning district regulations for lot coverage, height and setback, front yard, side yards, rear yard, and distance between windows and lot lines, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, 24-36 and 24-651; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 26, 2012" – Fourteen (14) sheets, and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 11,967 sq. ft. (2.99 FAR); a maximum lot coverage of 94 percent; a maximum wall height of 47'-0"; a front yard with a minimum depth of 5'-5"; a rear yard with a minimum depth of 20'-0" above the second floor; and a minimum distance between windows and lot lines of 4'-10 1/2", as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4) and an accessory Rabbi's apartment;

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the

Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 142-11-BZ

APPLICANT – Goldman Harris LLC, for The Phillippe at W75st NY, LLC, owner.

SUBJECT – Application September 9, 2011 – Variance (§72-21) to allow a new residential building, contrary to height and setback (§23-692), rear setback (§23-633), and lot coverage (§23-145) regulations. C4-6A zoning district. PREMISES AFFECTED – 207 West 75<sup>th</sup> Street, north side of West 75<sup>th</sup> Street, between Broadway and Amsterdam Avenue, Block 1167, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #7M

For Applicant: Eugene Travers.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 20-12-BZ

### CEQR #12-BSA-071K

APPLICANT – Herrick, Feinstein LLP, for LNA Realty Holdings, LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application January 31, 2012 – Special Permit (§73-36) to allow the legalization of the operation of a physical culture establishment (*Retro Fitness*) in an under construction mixed residential/commercial building. M1-2/R6B zoning district.

PREMISES AFFECTED – 203 Berry Street, aka 195-205 Berry Street; 121-127 N. 3<sup>rd</sup> Street, northeast corner of Berry and N. 3<sup>rd</sup> Streets, Block 2351, Lot 1087, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lee Gold.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated January 18, 2012, acting on Department of Buildings Application No. 320411287, reads in pertinent part:

The subject property to be used as a physical culture establishment is contrary to section 42-10 ZR and requires a special permit from the NYC BSA pursuant to Section 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-2/R6B zoning district within Special Mixed Use District 8 (MX-8), the legalization of a physical culture establishment (PCE) at the sub-cellar and first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application on the condition that it cease operations until the applicant receives the BSA special permit; and

WHEREAS, the subject site is located on the northeast corner of Berry Street and North 3<sup>rd</sup> Street, within an M1-2/R6B (MX-8) zoning district; and

WHEREAS, the site is located on a corner lot with approximately 122 feet of frontage on Berry Street, 400 feet frontage on North 3<sup>rd</sup> Street, and a total lot area of 41,419 sq. ft. and

WHEREAS, the site is occupied by a five-story mixed-use commercial/residential building; and

WHEREAS, the proposed PCE will occupy 2,635 sq. ft. of floor area on the first floor, with an additional 21,337 sq. ft. of floor space located at the sub-cellar level; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 5:00 a.m. to 7:00 p.m.; and

WHEREAS, at hearing, the Board raised concerns regarding the adequacy of sound attenuation provided to minimize any potential noise impacts on the residential units within the building; and

WHEREAS, in response, the applicant notes that less than ten percent of the PCE's exercise area is located adjacent to residential units; and

WHEREAS, further the applicant notes that the existing PCE has eight inch thick concrete walls and floor slabs which provide sound insulation that complies with the

sound insulation requirements of the New York City Building Code; and

WHEREAS, the Board also questioned whether a Public Assembly permit is required for the PCE; and

WHEREAS, in response, the applicant represents that they are in the process of preparing their Public Assembly permit application for submission to the Department of Buildings; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the Board notes that the PCE has been in operation since March 17, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between March 17, 2012 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA071K, dated January 23, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the

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environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within in an M1-2/R6B (MX-8) zoning district, the legalization of a PCE at the sub-cellar and first floor of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 29, 2012" – Seven (7) sheets and *on further condition*:

THAT the term of this grant will expire on March 17, 2022;

THAT the applicant will obtain a Public Assembly permit from the Department of Buildings by January 10, 2013; and

THAT there will be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT all massages must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 44-12-BZ

### CEQR #12-BSA-081K

APPLICANT – Sheldon Lobel, P.C., for 952-1064 Flatbush Avenue ELB LLC, owner; 1024 Flatbush Avenue Fitness Group, LLC, lessee.

SUBJECT – Application February 23, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing four-story building. C4-4A zoning district.

PREMISES AFFECTED – 1024 Flatbush Avenue, west side of Flatbush Avenue between Regent Place and Beverly Road, Block 5125, Lot 56, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 10, 2012, acting on Department of Buildings Application No. 320411149, reads in pertinent part:

Proposed establishment of physical and cultural establishment use in C4-4A district is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4A zoning district, the operation of a physical culture establishment (PCE) on the first, second, third and fourth floors in a four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 10, 2012; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of Flatbush Avenue between Regent Place and Beverly Road, within a C4-4A zoning district; and

WHEREAS, the site is located on an interior lot with approximately 80 feet of frontage on Flatbush Avenue and a total lot area of 7,692 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story commercial building, which is being enlarged to create a four-story commercial building; and

WHEREAS, the proposed PCE will occupy 19,022 sq. ft. of floor area on the first through fourth floors of the subject building; and

WHEREAS, the PCE will be operated as Planet Fitness;

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and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be 24 hours a day, seven days a week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, during the public hearing, the Board raised concerns regarding potential lighting impacts on adjacent residential uses as a result of the proposed 24 hour operation of the PCE; and

WHEREAS, in response, the applicant notes that third and fourth floor windows are located at least thirty feet from the rear property line and therefore set back by a similar distance from any adjacent residential windows; and

WHEREAS, further, the applicant notes that the PCE will incorporate the following measures to ensure that there will be no lighting impacts during the PCE's overnight hours of operation on the occupants of the residential building to the rear of the subject site: (1) use of low intensity LED lighting that is set back eight feet from the windows; and (2) installation of tinted glazing on the third and fourth floor windows in the rear of the subject building that will further reduce the amount of light transmitted; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA081K, dated February 22, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and

Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C4-4A zoning district, the operation of a PCE on the first, second, third and fourth floors in a four-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 22, 2012" - Seven (7) sheets, and *on further condition*:

THAT the term of this grant will expire on July 10, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT lighting reduction measures, including LED lighting and tinted glazing on the third and fourth floors will be provided as indicated on the BSA-approved plans; and

THAT the proposed building will be reviewed by DOB for compliance with all bulk regulations of the Zoning Resolution;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2012.

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# MINUTES

## 78-12-BZ

### CEQR #12-BSA-102M

APPLICANT – Francis R. Angelino, Esq., for Jonathan P. Rosen, owner; End 2 End Game Training LLC, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*End 2 End*). C6-4A zoning district.

PREMISES AFFECTED – 443 Park Avenue South, northeast corner of East 30<sup>th</sup> Street, Block 886, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 23, 2012, acting on Department of Buildings Application No. 121004545, reads in pertinent part:

Proposed Physical Culture Establishment not permitted as-of-right as per ZR 32-10, a special permit by the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4A zoning district, the operation of a physical culture establishment (PCE) in a portion of the cellar of an eleven-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in *The City Record*, and then to decision on July 10, 2012; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject site is located on the northeast corner of East 30<sup>th</sup> Street, within a C6-4A zoning district; and

WHEREAS, the site is a corner lot with 74 feet of frontage on Park Avenue South, 90 feet of frontage on East 30<sup>th</sup> Street, and a total lot area of 6,662 sq. ft.; and

WHEREAS, the proposed PCE will occupy 4,973 sq. ft. of floor space at the cellar level; and

WHEREAS, the PCE will be operated as End2End Game Training; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 1:00 p.m.; and

WHEREAS, the applicant represents that the services

at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant notes that the PCE will incorporate the following sound attenuation measures to comply with the NYC Noise Control Code and to ensure that there are no impacts on the adjacent building's residential occupants: (1) acoustic tile ceilings, covering approximately 50 percent of the project area (located throughout PCE); (2) tectum, sound-absorbing, acoustic panels, covering approximately ten percent of the project area (located in the main exercise area only); (3) absorptive rubber flooring surfaces throughout the entire PCE; and (4) acoustic batt insulation in all partitions; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA102M, dated March 6, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental

# MINUTES

Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C6-4A zoning district, the operation of a PCE in a portion of the cellar of an eleven-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 18, 2012" - (2) sheets, and *on further condition*:

THAT the term of this grant will expire on July 10, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the sound attenuation measures will be provided as indicated on the BSA-approved plans;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 10, 2012.

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## 42-10-BZ

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to August

21, 2012 at 1:30 P.M., for adjourned hearing.

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## 147-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jordan Most and Zosimo Lerum, Jr.

For Opposition: Alan Rothbard, Mosharaf Hossain and Consuelo Paris Celestine.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for continued hearing.

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## 187-11-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for Sanford Realty, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Ron Mandel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 193-11-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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## APPEARANCES –

For Applicant: Eric Palatnik and Ian Rasmussen.

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 1:30 P.M., for continued hearing.

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## 7-12-BZ

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

### COMMUNITY BOARD #4BK

## APPEARANCES –

For Applicant: Eric Palatnik, John Paul Murray and Jeffrey Fisch.

For Opposition: Dale D.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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## 16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

## APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

For Opposition: Diana C. Prevette, Ricardo Strobert, Sondra V Davis, Rened L. Branch, Emma Chollette-Fraser and Cynthia Balde.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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## 64-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16302 Jamaica LLC, owner; Blink Jamaica Avenue, Inc., lessee.

SUBJECT – Application March 20, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*) within portions of an existing building. C6-3(DP) zoning district.

PREMISES AFFECTED – 163-02 Jamaica Avenue, southeast corner of intersection of Jamaica and Guy R. Brewer Boulevard, block 10151, Lot 1, Borough of Queens.

### COMMUNITY BOARD #12Q

## APPEARANCES –

For Applicant: Adam W. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 24, 2012, at 1:30 P.M., for decision, hearing closed.

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## 68-12-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90<sup>th</sup> Street, Block 9093, Lot 13, Borough of Queens.

### COMMUNITY BOARD #9Q

## APPEARANCES –

For Applicant: Hiram A. Rothkrug.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.

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## 80-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts.

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

### COMMUNITY BOARD #4BK

## APPEARANCES –

For Applicant: Adam Rothkrug, Joe Nahas and Jill Kargman.

For Opposition: Christopher Rizzo and Francis Blassner.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for continued hearing.

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## 104-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, Block 9937, Lot 60, Borough of

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# MINUTES

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Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**\*CORRECTION**

This resolution adopted on June 12, 2012, under Calendar No. 136-01-BZ and printed in Volume 97, Bulletin No. 25, is hereby corrected to read as follows:

**136-01-BZ**

APPLICANT – Eric Palatnik, P.C., for Cel Net Holdings Corp., owner.

SUBJECT – Application April 20, 2012 – Extension of Time to complete Construction and obtain a Certificate of Occupancy for a previously granted Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements which expired on March 21, 2012. M1-4/R-7A zoning district.

PREMISES AFFECTED – 11-11 44<sup>th</sup> Drive, north side of 44<sup>th</sup> Drive between 11<sup>th</sup> Street and 21<sup>st</sup> Street, Block 447, Lot 13, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction and obtain a certificate of occupancy for a previously granted variance; and

WHEREAS, a public hearing was held on this application on May 15, 2012, after due notice by publication in *The City Record*, and then to decision on June 12, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located on the north side of 44<sup>th</sup> Drive, between 11<sup>th</sup> Street and 21<sup>st</sup> Street, within an M1-4 (R7A) zoning district; and

WHEREAS, on June 11, 2002, the Board granted an application under ZR § 72-21, to permit, in an M1-4 zoning district, an increase in floor area for a wholesale office with accessory storage (Use Group 10) and the legalization of the existing encroachment into the rear yard; and

WHEREAS, substantial construction was to be completed by June 11, 2006 in accordance with ZR § 72-23; and

WHEREAS, on March 28, 2006, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 28, 2008; and

WHEREAS, on January 12, 2010, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, which expired on July 12, 2010, and an amendment to the approved plans to reflect that the previously-approved enlargement had been eliminated and that

# MINUTES

the total floor area of the proposed building will remain at 31,784 sq. ft.; and

WHEREAS, most recently, on September 21, 2010, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, to expire on March 21, 2012; and

WHEREAS, the applicant now requests an additional extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that since the Board's prior grant of an extension of time the owner has made substantial expenditures toward completing the project, totaling \$427,359.04, which included substantial improvements to the structure, mechanical systems, fireproofing and sprinklering, and interior of the building; and

WHEREAS, in support of the work performed on the site since the prior grant, the applicant submitted expense reports reflecting the expenditures made on construction, and photographs of the work completed on the site; and

WHEREAS, the applicant states that approximately 90 percent of the work is complete at the site, and requests a one-year extension of time to complete construction, consisting of minor interior carpentry, painting, and carpeting, and to obtain a certificate of occupancy; and

WHEREAS, based upon the above, the Board finds 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 *reopens* and *amends* the resolution, dated June 11, 2002, so that as amended this portion of the resolution shall read: "to permit an extension of time to complete construction and obtain a certificate of occupancy, to expire on June 12, 2013; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT substantial construction will be completed and a certificate of occupancy obtained by June 12, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 400838894)

Adopted by the Board of Standards and Appeals, June 12, 2012.

**\*The resolution has been revised to correct the DOB Application No. which read: 400849748; now reads: 400838894. Corrected in Bulletin Nos. 27-29, Vol. 97, dated July 19, 2012.**

## \*CORRECTION

This resolution adopted on May 8, 2012, under Calendar No. 203-07-BZ and printed in Volume 97, Bulletin No. 20, is hereby corrected to read as follows:

### 203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar Inc., owner.  
SUBJECT – Application December 30, 2011 – Amendment to a previous variance (§72-21) which allowed for the construction of a mixed use building, contrary to floor area an open space regulations. The amendment requests changes to the interior layout which would decrease medical office space, increase the number of dwelling units from 26 to 36, and increase parking from 58 to 61 spaces. R6/C2-2 zoning district.

PREMISES AFFECTED – 137-35 Elder Avenue, northwest corner of Main Street and Elder Avenue. Block 5140, Lot 40. Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a 12-story mixed-use commercial/community facility/residential building; and

WHEREAS, a public hearing was held on this application on March 20, 2012 after due notice by publication in *The City Record*, with a continued hearing on April 24, 2012, and then to decision on May 8, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1) the owner ensures that the existing underground oil/gas tanks are legally removed and the soil is remediated; and (2) the parking plan be reviewed for compliance with zoning, height, and width; and

WHEREAS, the site is located on the northeast corner of Main Street and Elder Avenue; and

WHEREAS, the site is partially within an R6 zoning district and partially within an R6/C2-2 zoning district and has a total lot area of 9,632 sq. ft.; and

WHEREAS, on August 25, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a 12-story mixed-use commercial/community facility/residential building which did not comply with the underlying zoning regulations for

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# MINUTES

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floor area ratio (“FAR”) and open space, contrary to ZR § 23-142; and

WHEREAS, the applicant now requests an amendment to permit changes to the interior layout of the proposed building, including an increase in the number of dwelling units and parking spaces, an increase in the commercial floor area, a decrease in the community facility floor area, and modifications to the floor-to-ceiling heights that result in a slight increase in the building height; and

WHEREAS, specifically, the applicant seeks to increase the number of dwelling units from 26 units to 36 units and to provide a corresponding increase in the number of accessory parking spaces, from 58 spaces to 61 spaces; and

WHEREAS, the applicant states that the additional ten dwelling units are created by rearranging the interior layout on the third through tenth floors to create four dwelling units on each floor instead of three, and converting the two approved 11<sup>th</sup> and 12<sup>th</sup> floor duplexes into four single-floor units; the proposed residential floor area remains the same as the floor area approved by the Board pursuant to the original variance (33,292 sq. ft.); and

WHEREAS, the applicant further states that the additional number of parking spaces required by the proposed increase in dwelling units will be accommodated by installing stackers in the cellar and second floor parking garages; and

WHEREAS, the applicant notes that the proposed 61 parking spaces includes the required 55 parking spaces and six required queuing spaces; and

WHEREAS, the applicant states that the floor-to-ceiling heights of the cellar, first, and second floors have been adjusted to accommodate the stackers (which require overhead clearance of 10’-0”), resulting in a 1’-0” increase in the total building height, from 137’-6” to 138’-6”; and

WHEREAS, the applicant notes that the proposed height remains within the building envelope that is permitted as-of-right; and

WHEREAS, the applicant also seeks a slight increase in the commercial floor area on the ground floor from 6,820 sq. ft. to 7,040 sq. ft., due to a redesigned elevator core which was relocated to reduce the distance from the street entrance to the elevators, and a slight decrease in the community facility floor area from 4,850 sq. ft. to 4,149 sq. ft., due to the enlargement of the second floor parking garage to accommodate the additional parking spaces; and

WHEREAS, the applicant states that the proposed amendments will not adversely affect the surrounding neighborhood, as only ten additional dwelling units are proposed and required parking will be provided within the building; and

WHEREAS, the applicant further states that no increase in the approved residential floor area or decrease in the approved residential open space is requested; and

WHEREAS, in response to the Community Board’s concerns regarding environmental remediation, the applicant states that its environmental consultant is working with the New York State Department of Environmental Conservation

(“DEC”) to determine the extent and scope of work necessary to remediate the soil at the site, that DEC requested the submission of a Remedial Action Work Plan (“RAWP”), and that upon approval of the RAWP it will undertake the necessary soil remediation measures simultaneously with the commencement of construction at the site; and

WHEREAS, as to the Community Board’s concerns regarding the proposed parking plan, the applicant submitted revised plans which reflect the proposed parking stackers at the second and cellar floors, and the adjusted floor-to-ceiling heights of the cellar, first, and second floors to accommodate the stackers; and

WHEREAS, the Board notes that the proposed parking plan is subject to DOB review and approval for compliance with the Zoning Resolution and Building Code, and any other applicable requirements; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 25, 2009, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 26, 2012”–eleven (11) sheets; and *on further condition*:

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402635403)

Adopted by the Board of Standards and Appeals May 8, 2012.

**\*The resolution has been revised to correct part of the SUBJECT which read:** ...“dwelling units from 28 to 36...” **now reads:** ...“dwelling units from 26 to 36”, to remove the 7<sup>th</sup> WHEREAS; **and to correct** “...the interior layout on the fourth through tenth floors...”, **now reads:** “...the interior layout on the third through tenth floors...”; **and the part of the building height which read:** “from 137’-11” to 138’-11”... **now reads:** “from 137’-6” to 138’-6””; **Corrected in Bulletin Nos. 27-29, Vol. 97, dated July 19, 2012.**

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# BULLETIN

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AND APPEALS

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Volume 97, No. 30

July 25, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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<b>OFFICE -</b>	<b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>
<b>HEARINGS HELD -</b>	<b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>
<b>BSA WEBPAGE @</b>	<b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b>

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<b>FAX - (212) 788-8769</b>

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163-04-BZ	671/99 Fulton Street, Brooklyn
292-55-BZ	239-15 Jamaica Avenue, Queens
39-65-BZ	2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Brooklyn
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294-06-BZ	31-11 Broadway, Queens
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48-12-BZ	336 West 37 <sup>th</sup> Street, Manhattan
87-12-BZ	1720-28 Sheepshead Bay Road, Brooklyn



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# DOCKET

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New Case Filed Up to July 17, 2012  
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**213-12-A**

900 Beach 184th Street, east side Beach 184th Street, 240' north of Rockaway Point Boulevard., Block 16340, Lot(s) p/o50, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling partially within the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 district.  
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**214-12-BZ**

2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot(s) 70, Borough of **Brooklyn, Community Board: 13**. Re-instatement (§§11-411 and 11-413) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) on a lot with an existing Auto Laundry. The application seeks to re-instate the term of the variance which ex R5/C2-2 district.  
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**215-12-A**

307 West 79th Street, northside West 79th Street, between West End Avenue and Riverside Drive., Block 1244, Lot(s) 8, Borough of **Manhattan, Community Board: 7**. Appeal seeks a reversal of a DOB determination to revoke the work permit based on the use of the premises as a transient hotel which is contrary to Certificate of Occupancy No. 53010 and that a Certificate of No Harassment from HPD pursuant BC 28-107.4 R10A district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**AUGUST 7, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 7, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**548-69-BZ**

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 –Extension of Term for a previously granted Variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107<sup>th</sup> Street, Block 1694, Lot 1, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**69-91-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for The 61 West 62<sup>nd</sup> Street Condominium, owner; TSI Lincoln LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 26, 2012; an Amendment for the decrease in floor area; Waiver of the Rules. C4-7 (L) zoning district.

PREMISES AFFECTED – 49-61 West 62<sup>nd</sup> Street, northeasterly corner of West 62<sup>nd</sup> Street and Columbus Avenue, Block 1115, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**93-97-BZ**

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted Variance (72-21) to permit the change in use of a portion of the existing second floor (5902sf) which is currently occupied by 13 off street accessory parking spaces to UG 6 office use. C4-3 zoning district.

PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**72-04-BZ**

APPLICANT – Eric Palatnik, P.C., for Bway-129 St. Gasoline Corp., owner.

SUBJECT – Application December 5, 2011 – Extension of Term (§11-411) of a previously approved variance, which permitted the erection and maintenance of an automotive service station (UG 16B) with accessory uses which expired on June 3, 2010; Waiver of the Rules of Practice and Procedure. R6/C1-2 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, southwest corner of Parsons Boulevard, Block 5012, Lot 45, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**98-06-BZ/284-06-A**

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to increase the maximum allowable height and amend the setbacks (§24-551 and §24-521), increase floor area (§24-11), increase lot coverage (§24-11), reduce front yards (§24-34), reduce side yards (§24-35) and to extend the time to complete construction in the bed of the mapped not built portion of Dinsmore Avenue under GCL 35 to reflect a new design. R4A Zoning District.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**APPEALS CALENDAR**

**45-03-A thru 62-03-A & 64-03-A**

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of single family homes not fronting on a legally mapped street contrary to Section 36 of the General City Law and also located within the bed of a mapped street contrary to Section 35 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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# CALENDAR

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## **83-12-A & 84-12-A**

APPLICANT – Richard G. Leland, Esq./Fried Frank, for Frank Ferrovicchio, owner; Millennium Billboards LLC, lessee..

SUBJECT – Application April 6, 2012 – Appeal from Department of Buildings’s determination that signs are not entitled to continued non- conforming use status as advertising signs. C8-3 Zoning District.

PREMISES AFFECTED – 653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot 115, Borough of Bronx.

### **COMMUNITY BOARD #2BX**

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## **164-12-A**

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Robert Hauck, lessee.

SUBJECT – Application June 11, 2012 – Proposed reconstruction and enlargement of a single family home not fronting on a legally mapped street contrary to Art. 3 Sect.36 GCL and also partially in the bed of a mapped street contrary to Art 3 Sect. 35 of the Gen. City Law.

PREMISES AFFECTED – 210 Oceanside Avenue, Block 16350, part of Lot 400, Borough of Queens.

### **COMMUNITY BOARD #14Q**

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**AUGUST 7, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, August 7, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **2-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Tehjila Development, LLC, owner.

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three story with cellar, two family dwelling on a vacant lot, contrary to side yard requirement (ZR §23-48); less than the required number of parking spaces (ZR §25-21) and location of one parking space within the front yard (ZR §23-44). R5 Zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29’ south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

### **COMMUNITY BOARD #9Q**

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### **11-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application November 17, 2012 – Special

Permit (§73-622) for the legalization of an enlargement to an existing single family home contrary floor area and open space (23-141); side yards (23-461) and less than the required rear yard (23-47). R-2 zoning district.

PREMISES AFFECTED – 3599 Bedford Avenue, East side of Bedford Avenue, between Avenue N and Avenue O, Borough of Brooklyn, Block 7679, Lot 13, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

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### **61-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a Use Group 6 restaurant in a portion of the cellar and first floor of the existing two-story and cellar building. M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25’ of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

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### **141-12-BZ**

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc., owner.

SUBJECT – Application May 3, 2012 – Re-Instatement (§§11-411 & 11-412) of a previously approved variance which permitted retail (UG 6) in a residential district which expired on October 14, 1989; Amendment to permit the installation of three (3) new awnings with signage; and changes to the interior layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164<sup>th</sup> Street, southwest corner of 65<sup>th</sup> Street, Block 6762, Lot 53, Borough of Queens.

### **COMMUNITY BOARD #8Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, JULY 17, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Hinkson and Commissioner Montanez.  
Absent: Commissioner Ottley-Brown  
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### SPECIAL ORDER CALENDAR

#### 534-65-BZ

APPLICATION – Alfonso Duarte for Parker Yellowstone, owner.

SUBJECT – Application March 9, 2012 – Extension of Term permitting surplus tenant parking spaces, within an accessory garage, for transient parking pursuant to §60 (3) of the Multiple Dwelling Law, which expired on July 13, 2010; waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 104-40 Queens Boulevard, northeast corner Yellowstone Boulevard. Block 3175, Lot 1. Borough of Queens.

#### COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a transient parking garage, which expired on July 13, 2010; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 17, 2012; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is a corner lot with approximately 247 feet of frontage on Pedestrian Way and 299 feet of frontage on Yellowstone Parkway, within an R7-1 zoning district; and

WHEREAS, the site is occupied by a 16-story residential building; and

WHEREAS, the subject zoning lot consists of the entirety of the block bounded by Queens Boulevard to the north, Pedestrian Way and 68<sup>th</sup> Drive to the west, and Yellowstone Parkway to the south, and is occupied by the

subject building and two additional 16-story residential buildings with inter-connected parking garages located below grade; however, only the parking garage for the subject building at 104-40 Queens Boulevard provides transient parking spaces; and

WHEREAS, two sub-cellar levels of the subject building are occupied by a 181-space accessory parking garage; and

WHEREAS, on July 13, 1965, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law to permit a maximum of 110 surplus parking spaces to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 12, 2000, the Board granted a ten-year extension of term, which expired on July 13, 2010; and

WHEREAS, the applicant states that the requested number of transient parking spaces has been reduced from 110 to 75; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, at hearing, the Board questioned why the reservoir space reflected on the previous plans has been removed; and

WHEREAS, in response, the applicant states that the reservoir space was provided due to the intermingling of the transient spaces and the tenant spaces, however, separate gates have been installed in the garage for the tenants of the three buildings and for the transient parkers, which alleviated the need for the reservoir space; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution having been adopted on July 13, 1965, so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the grant for an additional ten years from July 13, 2010, to expire on July 13, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received 'March 9, 2012' – (1) sheet and 'June 27, 2012'-(2) sheets; and *on further condition*:

THAT this term will expire on July 13, 2020;

THAT all residential leases must indicate that the 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 must be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT all signage will be in accordance with the BSA-approved plans;

THAT the above conditions and all relevant conditions from the prior resolutions will appear on the certificate of

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# MINUTES

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occupancy;

THAT the layout of the parking lot will be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, July 17, 2012.

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## 12-91-BZ

APPLICANT – Rampulla Associates Architects, for Miggy’s Too Delicatessen Corp., owner.

SUBJECT – Application March 12, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6 food store (*Bayer’s Market*) which expired on April 21, 2012; Amendment to eliminate landscaping, legalize an outdoor refrigeration unit, eliminate hours for garbage pickup, and request to eliminate the term of the variance. R3-2 zoning district.

PREMISES AFFECTED – 2241 Victory Boulevard, north south corner of Victory Boulevard and O’Connor Avenue, Block 463, Lot 25, Borough of Staten Island.

### COMMUNITY BOARD #1SI

#### APPEARANCES –

For Applicant: Phillip L. Rampulla.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term, and an amendment to a previously granted variance for the operation of a food store (Use Group 6), which expired on April 21, 2012; and

WHEREAS, a public hearing was held on this application on May 15, 2012 after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on July 17, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on an irregularly-shaped corner lot with approximately 130 feet of frontage on the north side of Victory Boulevard and 130 feet of frontage on the east side of O’Connor Avenue, within an R3-2 zoning district; and

WHEREAS, the subject site is occupied by a one-story food store (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the site since April 21, 1992 when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story food store (Use Group 6) in an R3-2 zoning district for a term of 20 years, which expired on April 21, 2012; and

WHEREAS, most recently, on September 20, 1994, the Board granted a two-year extension of time to complete construction; and

WHEREAS, the applicant now requests an amendment to (1) eliminate the term of the grant, (2) reflect the replacement of landscaping along the northern lot line at the rear of the site with gravel, (3) modify the condition stipulating the hours of garbage pickup, and (4) reflect the addition of a refrigeration unit at the rear of the site; and

WHEREAS, the applicant states that the elimination of the term is warranted because the subject site has operated in accordance with the terms of the variance for more than 20 years, and represents that imposing such a term on an occupied commercial building constructed pursuant to a variance is an unnecessary encumbrance and financial burden; and

WHEREAS, at the direction of the Board, the applicant notified the neighbors within a 200-ft. radius of the request to eliminate the term of the variance; and

WHEREAS, the Board notes that the only response it received from the neighbors was in support of the proposed application; and

WHEREAS, as to the hours of garbage pickup, the applicant seeks to modify the condition from the original grant which required garbage pickup to occur between the hours of 9:00 a.m. and 3:00 p.m., to reflect extended garbage pickup hours of between 9:00 a.m. and 9:00 p.m.; and

WHEREAS, at hearing, the Board noted that, based on its site visits, the new refrigeration unit at the rear of the site creates noise and requested that the applicant provide sound attenuation measures for the refrigeration unit; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the refrigeration unit will be enclosed with an “acoustifence” sound barrier material attached to a chain link fence with a height of six feet, and that bushes will be planted around the perimeter of the chain link fence to a height of four feet; and

WHEREAS, the applicant states that the noted sound attenuation measures will reduce the noise generated by the refrigeration unit to levels that comply with the New York City Noise Control Code; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 21, 1992, so that as amended this portion of the resolution shall read: “to eliminate the term of the variance and permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this

# MINUTES

application and marked 'Received July 2, 2012' –(6) sheets; and *on further condition:*

THAT all garbage will be picked up three times per week between the hours of 9:00 a.m. and 9:00 p.m. to minimize the noise and vehicle impact on the adjacent residential uses;

THAT sound attenuation measures and landscaping will be provided as illustrated on the BSA-approved plans;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 520092195)

Adopted by the Board of Standards and Appeals July 17, 2012.

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## 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy of a special permit (§73-63) for the operation of a physical culture establishment (*Crunch Fitness*) which expired on April 24, 2011; Waiver of the Rules. R7A (C2-4) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and St. Felix Street, Block 2096, Lot 66, 69, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on April 24, 2011; and

WHEREAS, a public hearing was held on this application on June 12, 2012 after due notice by publication in *The City Record*, and then to decision on July 17, 2012; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the

northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R6) zoning district; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the site is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor of both buildings and the mezzanine of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2015; and

WHEREAS, most recently, on April 24, 2007, the Board granted an amendment to permit the enlargement of the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building, and to extend the hours of operation to 24 hours, daily; and

WHEREAS, substantial construction was to be completed and a certificate of occupancy obtained by April 24, 2011, in accordance with ZR § 73-70; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that, although work is substantially completed, a certificate of occupancy has not been obtained due to problems with contractors and a recent audit of the application affecting Lot 66; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 12, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on July 17, 2013; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition:*

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy must be obtained by July 17, 2013;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 300326895)

Adopted by the Board of Standards and Appeals, July 17, 2012.

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## **292-55-BZ**

APPLICANT – Alfonso Duarte, for Narkeet Property Inc., owner.

SUBJECT – Application April 2, 2012 – Extension of Term (§11-411) for the continued operation of an Automotive Service Station (GULF) which expired on April 10, 2011; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 239-15 Jamaica Avenue, northwest corner of 240<sup>th</sup> Street, Block 8001, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for decision, hearing closed.

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## **39-65-BZ**

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for continued hearing.

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## **579-78-BZ**

APPLICANT – Alfonso Duarte, for LEM LEE 58 L.P c/o Mautner-Glick Management, owner.

SUBJECT – Application April 24, 2012 – Extension of Term of a previously-approved variance (§72-21) which permitted retail use on a portion of the first floor and cellar

of an existing six story multiple dwelling, which expired on January 30, 2004; Waiver of the Rules. R8B zoning district. PREMISES AFFECTED – 236-238 East 58<sup>th</sup> Street, south side 160’ west of 2<sup>nd</sup> Avenue, Block 1331, Lot 31, Borough of Manhattan.

### **COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for decision, hearing closed.

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## **406-82-BZ**

APPLICANT – Eric Palatnik, P.C., for Adolf Clause and Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application May 22, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously-approved special permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on May 3, 2012. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for continued hearing.

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## **294-06-BZ**

APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.

SUBJECT – Application February 8, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.

PREMISES AFFECTED – 31-11 Broadway, between 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 613, Lots 1 & 4, Borough of Queens.

### **COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Eugene C. Traver.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 80-11-A, 84-11-A, 85-11-A & 103-11-A

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 331, 333, 335, 329 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 46, 45, 44, 47, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Peter Geis.

For Opposition: Chris Labarge of Council Member Rosie Mendez and Kevin Shea.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for continued hearing.

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### 83-11-A

APPLICANT – Marvin B. Mitzner, Esq., for 159 West 78<sup>th</sup> Street, Corp., for Felix and Lisa Oberholzer-Gee, owners.

SUBJECT – Application June 9, 2011 – Appeal pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for a one-story enlargement of a four-story building, contrary to Multiple Dwelling Law §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 159 West 78<sup>th</sup> Street, north side of West 78<sup>th</sup> Street, between Columbus and Amsterdam Avenues, Block 1150, Lot 8, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 10 A.M., for decision, hearing closed.

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### 46-12-A

APPLICANT – Eric Palatnik, P.C., for Tremont Three, LLC, owner.

SUBJECT – Application March 1, 2012 – Application to permit a mixed use development located partially within the bed of a mapped but unbuilt street (East Tremont Avenue), contrary to General City Law Section 35. C4-5X/R7X zoning district.

PREMISES AFFECTED – 4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues, Block 3027, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to August

14, 2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, JULY 17, 2012 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson and Commissioner Montanez.

Absent: Commissioner Ottley-Brown

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## ZONING CALENDAR

### 71-11-BZ

#### CEQR #11-BSA-099Q

APPLICANT – Sheldon Lobel, P.C., for Masjid Al-Taufiq, Inc., owner.

SUBJECT – Application May 23, 2011 – Variance (§72-21) to legalize the conversion of a mosque (*Masjid Al-Taufiq*), contrary to lot coverage (§24-11), front yard (§24-34), and side yard (§24-35) regulations. R4 zoning district.

PREMISES AFFECTED – 41-02 Forley Street, northeast corner of the intersection formed by Forley Street and Britton Avenue, Block 1513, Lot 6, Borough of Queens.

### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 21, 2011, acting on Department of Buildings Application No. 420340615 reads, in pertinent part:

The proposed enlargement and change of use group from residential (Use Group 2) to community facility (Use Group 4) in an R4 zoning district is contrary to Zoning Resolution Sections 24-11 (lot coverage), 24-34 (front yard), and 24-35 (side yards); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R4 zoning district, the conversion and of an existing residential building (Use Group 2) to a mosque (Use Group 4), which does not comply with the underlying zoning district regulations for lot coverage, front yard, and side yards, contrary to ZR §§ 24-11, 24-34, and 24-35; and



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WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in *The City Record*, with continued hearings on May 15, 2012 and June 12, 2012, and then to decision on July 17, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of Masjid Al-Taufiq, Inc. (the "Mosque"), a non-profit religious entity; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Forley Street and Britton Avenue, within an R4 zoning district; and

WHEREAS, the subject lot has 27'-6" of frontage on Forley Street, 100 feet of frontage on Britton Avenue, and a lot area of 2,750 sq. ft.; and

WHEREAS, the subject site is currently occupied by a legal non-complying 4,049 sq. ft. (1.47 FAR) two-story building with a mosque at the cellar and first floors and residential dwelling units at the second floor, which does not comply with the residential zoning requirements for lot coverage, front yard, and side yards; and

WHEREAS, the applicant proposes to convert the entire building to a mosque (Use Group 4) which, due to the more restrictive zoning provisions for community facility uses, creates a new non-compliance with the front yard along Forley Street, and increases the degree of non-compliance with respect to lot coverage, the front yard along Britton Avenue, and one of the side yards; and

WHEREAS, specifically, the proposed mosque will have the following parameters: a floor area of 3,989 sq. ft. (1.45 FAR) (the maximum permitted floor area is 5,500 sq. ft. (2.0 FAR)); a wall height of 21'-0" (the maximum permitted wall height is 35'-0"); a lot coverage of 75 percent (the maximum permitted lot coverage is 60 percent); a front yard along Forley Street with a depth of 12'-0" and no front yard along Britton Avenue (two front yards with a minimum depth of 15'-0" each are required); and no side yards (two side yards with a minimum width of 8'-0" each are required); and

WHEREAS, the applicant originally proposed to enlarge the existing building to a floor area of 4,064 sq. ft. (1.48 FAR); and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting that the proposed conversion of the building to a mosque will be entirely within the existing envelope of the building; and

WHEREAS, the proposal provides for the following uses: (1) a study room and ablution room at the cellar; (2) a prayer room and accessory kitchenette at the first floor; and (3) a prayer room at the second floor; and

WHEREAS, because the proposed building does not comply with the bulk regulations of the underlying zoning district, the subject variance is requested; and

WHEREAS, the applicant states that the following is the

primary programmatic need of the Mosque which necessitates the requested variances: to accommodate the prayer space needs of the growing congregation; and

WHEREAS, the applicant states that the Mosque was founded in 1987 at a facility at 85-37 Britton Avenue, with approximately six executive members; and

WHEREAS, the applicant further states that in 2005 the Mosque relocated to the cellar and first floor of the subject building, where there are currently approximately 40 executive members; and

WHEREAS, the applicant represents that the Mosque anticipates a growth of 25 to 50 members over the next five years; and

WHEREAS, the applicant notes that the Mosque carries out five daily prayers and a special congregational prayer held on Friday afternoons, all of which are open to Muslims and are not limited to members of the Mosque; and

WHEREAS, the applicant represents that, depending on the time of day and day of the week, daily prayers are attended by between 15 and 35 worshippers, and as many as 150 to 200 worshippers may attend Friday afternoon prayer; and

WHEREAS, the applicant further represents that during holiday times and when there is school recess, even more worshippers attend the Friday afternoon prayer, such that worshippers must set up mats outside the building to pray; and

WHEREAS, the applicant states that prayer sessions last approximately 30 minutes and including a washing ritual where congregants use water to wash and cleanse in preparation for prayer prior to congregating in the prayer rooms; and

WHEREAS, the applicant represents that the conversion of the entire building to mosque use will better accommodate the prayer space needs of the Mosque, and the proposed expansion into the existing second floor will reasonably accommodate overflow prayer times during busy periods as well as the anticipated growth in membership; and

WHEREAS, the Board acknowledges that the Mosque, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Mosque create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, however, the applicant also represents that the narrow width of the corner lot and the effect of the community facility regulations on the existing building create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject site is a corner lot with a width

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of 27'-6"; and

WHEREAS, the applicant states that although a mosque is permitted as-of-right in the subject zoning district, the existing building does not comply with the underlying community facility regulations which require two front yards with depths of 15'-0" each and two side yards with depths of 8'-0" each; and

WHEREAS, the applicant states that the only way for the subject building to be used for an as-of-right community facility use is to remove extensive portions of three of the buildings' four facades to create complying yards and lot coverage; and

WHEREAS, the applicant notes that providing complying front and side yards would reduce the width of the building to 4'-6", rendering a complying use of the site as a community facility infeasible; and

WHEREAS, the applicant represents that, therefore, the requested lot coverage and yard waivers are required to allow for efficient floor plates that accommodate the Mosque's programmatic needs; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of the Mosque, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Mosque is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant states that the surrounding area is characterized by a variety of residential buildings; and

WHEREAS, as noted above, the applicant states that it merely proposes to convert the existing legal non-complying building to community facility use as a mosque and expand the mosque to the existing second floor of the subject building; no physical enlargement is proposed; and

WHEREAS, the applicant represents that there is no parking required for the proposed change of use to community facility use, and notes that all members of the Mosque and those attending daily prayers live within close proximity of the site and generally walk to the Mosque to pray; and

WHEREAS, at the direction of the Board, the applicant submitted revised plans reflecting that landscaping will be provided at the front of the site along Forley Street; and

WHEREAS, at hearing, the Board raised concerns about whether the fence along the site's Britton Avenue frontage is located on the sidewalk beyond the property line; and

WHEREAS, in response, the applicant confirmed that the building is constructed to the lot line along Britton Avenue and

therefore the fence is located approximately three feet beyond the property line; and

WHEREAS, the applicant provided an analysis of the fencing along Britton Avenue between Elbertson Street and Gleane Street which reflects that there are many fences located in the sidewalk within the immediate area; and

WHEREAS, the applicant states that the fence constitutes an obstruction in the City street, which the Department of Transportation ("DOT") has jurisdiction over, and represents that DOT often permits this type of condition to remain under its revocable consent program; and

WHEREAS, the applicant further states that it will petition DOT for a revocable consent to allow the fence or a modified fence to remain at the location; however, the applicant states that it anticipates the revocable consent approval process to take more than a year; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Mosque could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as noted above, the applicant originally proposed a small enlargement to the existing building, but removed the enlargement at the direction of the Board; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mosque the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA099Q, dated May 23, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed

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action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R4 zoning district, the conversion and of an existing residential building (Use Group 2) to a mosque (Use Group 4), which does not comply with the underlying zoning district regulations for lot coverage, front yard, and side yards, contrary to ZR §§ 24-11, 24-34, and 24-35; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 10, 2012" – Eight (8) sheets, and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 3,989 sq. ft. (1.45 FAR); a wall height of 21'-0"; a maximum lot coverage of 75 percent; a front yard along Forley Street with a depth of 12'-0"; no front yard along Britton Avenue; and no side yards, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building requires the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

THAT prior to the issuance of a certificate of occupancy, the applicant must either obtain from DOT a revocable consent for the fence along the Britton Avenue frontage, or remove said fence;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by July 17, 2014;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2012.

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## 174-11-BZ

### CEQR #12-BSA-039Q

APPLICANT – Daniel H. Braff, Esq., for The Church of Jesus Christ of Latter-day Saints, owner.

SUBJECT – Application November 9, 2011 – Variance (§72-21) to permit the development of a two-story chapel (*The Church of Jesus Christ of Latter-day Saints*), contrary to floor area ratio (§24-111) and permitted obstructions in the side yards and rear yard (§24-33). R2A zoning district. PREMISES AFFECTED – 145-15 33<sup>rd</sup> Avenue, north side of 33<sup>rd</sup> Avenue approximately 400' east of Parsons Boulevard, Block 4789, Lot 81, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Daniel Braff.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 20, 2011, acting on Department of Buildings Application No. 420256270 reads, in pertinent part:

Proposed community facility floor area and FAR exceed the maximum permitted under ZR § 24-111; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R2A zoning district, a two-story building to be occupied by a church (Use Group 4), which does not comply with the underlying zoning regulations for floor area ratio ("FAR"), contrary to ZR § 24-111; and

WHEREAS, a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2012, and then to decision on July 17, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends disapproval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends disapproval of this application; and

WHEREAS, New York State Senator Toby Ann Stavisky, New York State Senator Tony Avella, New York State Assembly Member Grace Meng, and New York State Assembly Member Rory I. Lancman provided testimony in opposition to this application; and

WHEREAS, the North East Flushing Civic Association, the Queens Village Civic Association, Inc., the Bayside Hills Civic Association, the Broadway-Flushing Homeowners' Association, Inc., and the Auburndale Improvement Association provided testimony in opposition to this

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application; and

WHEREAS, certain members of the community provided oral and written testimony in opposition to this application; and

WHEREAS, collectively, the parties who submitted testimony in opposition to this application are referred to as the "Opposition"; and

WHEREAS, the Opposition raised the following primary concerns: (1) the church should accommodate its programmatic needs within an as-of-right building at the site or redevelop its larger property at Sanford Avenue if it requires a building of the proposed size; (2) the claimed programmatic needs are exaggerated and the church does not require the number of Bible-study rooms requested; (3) the floor area for the proposed building is out of context with the surrounding neighborhood; (4) the proposed variance would undermine the Community Facility Reform Text Amendment of 2004; and (5) the proposed building does not represent the minimum variance because it is larger than is necessary to accommodate the size of the congregation; and

WHEREAS, this application is being brought on behalf of Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a non-profit religious entity (the "Church"); and

WHEREAS, the subject site is located on the north side of 33<sup>rd</sup> Avenue, between Parsons Boulevard and 146<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the subject site has 125 feet of frontage on 33<sup>rd</sup> Avenue, a depth of 195 feet, and a total lot area of 24,417 sq. ft.; and

WHEREAS, the applicant proposes to construct a two-story church building with a floor area of 21,433 sq. ft. (0.877 FAR); a lot coverage of 51 percent; a front yard with a depth of 32'-2"; two side yards each with a width of 11'-6"; a rear yard with a depth of 30'-0"; a total height of approximately 27'-4" at the side yards, 36'-4" at the center, 47'-3" at the top of the steeple base, and 91'-9" at the top of the steeple; and an accessory below-grade parking garage with 48 parking spaces (the "Chapel"); and

WHEREAS, the applicant originally proposed to construct a two-story building with a floor area of 23,097 sq. ft. (0.95 FAR), a lot coverage of 54 percent, a front yard with a depth of 26'-8", and a below-grade accessory parking garage with 55 parking spaces and a ramp with a grade of 13.5 percent in the front yard accessing the garage; and

WHEREAS, the original proposal required three variances: one to permit a community facility with an FAR exceeding the maximum permitted FAR of 0.50; a second to permit a deck above the base plane in the side yards and rear yard over the accessory below-grade parking garage, which is not a permitted obstruction; and a third to permit the proposed driveway for the accessory below-grade parking garage in the front yard with a grade exceeding the maximum permitted grade of 11 percent; and

WHEREAS, in response to concerns raised by the Opposition and the Board, the applicant submitted an interim proposal which reduced the floor area to 21,466 sq. ft. (0.879 FAR), reduced the lot coverage to 51 percent, increased the

depth of the front yard to 32'-2", and provided a level driveway in the front yard that eliminated the need for a waiver of ZR § 25-635 for maximum driveway grade; and

WHEREAS, in response to additional concerns raised by the Board regarding the requested variance for the deck in the side yards and rear yard, the applicant further revised its plans to eliminate the obstructions in the side yards and rear yard, such that the only remaining variance requested is for the FAR; and

WHEREAS, the proposed building will have the following uses: (1) a 48-space accessory parking garage at the cellar level; (2) a chapel, multi-purpose room, Bible-study rooms/teaching stations, clergy offices, and storage space at the first floor; and Bible-study rooms/teaching stations, clergy offices, and storage space at the second floor; and

WHEREAS, because the proposal does not comply with the underlying zoning district requirements for FAR, the subject variance is requested; and

WHEREAS, as to the finding under ZR § 72-21(a), that there are unique physical conditions which create practical difficulties or unnecessary hardship in complying with the underlying zoning regulations, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to the ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to locate the chapel in the subject neighborhood; (2) to accommodate the size of the congregation and allow for future growth; (3) to provide a sufficient number of bible study rooms/teaching stations; and (4) to provide an adequately-sized multi-purpose room; and

WHEREAS, the applicant represents that the Church holds as a religious tenet the need to locate its chapels in a neighborhood near to where local members live; and

WHEREAS, the applicant states that the proposed Chapel will serve three congregations whose members reside in Flushing and its closely surrounding areas: a Spanish-speaking congregation, an English-speaking congregation, and a Korean-speaking congregation, with average weekly attendance at congregational services of 98, 108, and 45, respectively; and

WHEREAS, the applicant notes that the Spanish and English-speaking congregations currently meet in a temporary facility at 14427 Sanford Avenue (the "Sanford Facility"); and

WHEREAS, the applicant represents that the Sanford Facility, which was formerly owned by the First Church of Christ, Scientist, has 7,600 sq. ft. of floor area above grade and 5,500 sq. ft. of floor space in the cellar, and does not meet the programmatic needs of the Church in terms of space, dimension, décor, layout, or design; and

WHEREAS, the applicant states that the Church purchased the Sanford Facility in 1994 when the Spanish and English-speaking congregations were significantly smaller, such that modest alterations to the building enabled members residing in Flushing to temporarily use the facility for worship without needing to travel to Little Neck, the next closest

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Church facility; and

WHEREAS, the applicant further states that since 1994, the two small congregations have grown in size and a Korean-speaking congregation has been formed; accordingly, the Sanford Facility does not provide a sufficient number of teaching stations, the Bible-study rooms are too small for the attendees, the room for the women's ministry is inadequate, the movable doors and low ceilings in the cellar space make it difficult to use as a worship space, there is no multi-purpose room for essential ministry activities, and the building is not ADA accessible preventing some members from participating in worship; and

WHEREAS, further, due to the space constraints and inadequate design, the applicant notes that the Korean-speaking congregation is entirely displaced and travels a great distance to share a facility at Little Neck for services; and

WHEREAS, the applicant represents that construction of the Chapel will allow all three congregations to meet central to where their members actually reside and in a facility that suits their worship needs; and

WHEREAS, the applicant submitted a programmatic needs study detailing why the Church requires the proposed Chapel, with its particular size and design, which notes that the Chapel consists of four major components: the sanctuary, teaching stations/Bible-study rooms, clergy offices, and a multi-purpose room; and

WHEREAS, the programmatic needs study submitted by the applicant states that one of the primary needs for the proposed floor area waiver is to provide a sufficient number of teaching stations/Bible-study rooms of appropriate size; and

WHEREAS, the applicant states that two sessions of instruction follow the congregational meeting during Sunday services as members divide by age and/or gender for targeted instruction and study of various subjects; and

WHEREAS, specifically, the programmatic needs study notes that: (1) toddlers 18 months to three years old require space or supervised play and simple gospel instruction; (2) children ages three to 11 meet for two hours each Sunday for "Primary," the children's ministry, where children ages eight to 11 meet together in a larger room for singing and group instruction for the first hour while children ages three to eight divide in one-year increments for age-appropriate instruction, and the groups switch at the end of the hour with the younger children meeting for group instruction and the older children dividing into individualized classes by age, with each group requiring its own small Bible-study room; (3) youth ages 12 to 18 meet for Sunday School in two-year increments and then further divide by gender, with each group requiring its own Bible-study room; (4) adults meet for Sunday school where they receive various courses in core religious subjects, each course requiring its own Bible-study room; and (5) the youth, women's, and men's ministries provide specialized teaching that caters to the needs of each group, which occurs during the third hour of the Church's three-hour worship services; and

WHEREAS, accordingly, the applicant states that all of the Bible-study rooms in the proposed Chapel will be continuously occupied during the two-hour instructional period for Primary, Sunday School, and the youth and adult ministries;

and

WHEREAS, the applicant further states that the elimination of teaching stations/Bible-study rooms would result in the Church not providing certain topics of study or the exclusion of certain congregants; and

WHEREAS, the applicant notes that the lack of adequate teaching stations/Bible-study rooms in the Sanford Facility is one of the primary reasons it is inadequate to meet the programmatic needs of the Church, as they are too small and insufficient in number, and are located in the cellar where they are not conducive to religious study; and

WHEREAS, the applicant states that the multi-purpose room is also essential to the Church's programmatic needs; and

WHEREAS, the applicant states that the multi-purpose room in the proposed Chapel provides overflow seating for congregational meetings in the sanctuary, is partitioned to create additional teaching stations during the instructional periods of worship, and is the principal venue for activities of the youth and women's ministries; and

WHEREAS, the applicant further states that the proposed multi-purpose room provides high ceilings to match those of the sanctuary to facilitate acoustics and a spirit of reverence during Sunday worship; and

WHEREAS, the applicant notes that the youth ministries, which will be held in the multi-purpose room on weekdays, are essential to the Church's programmatic needs as they fulfill the important religious purpose of strengthening the collective faith and helping youth resist the pull of drugs, delinquency, and other socially destructive behaviors; and

WHEREAS, the applicant represents that these activities (ranging from community service to scouting, tutoring, crafts, organized sports, or musical productions) are an integral part of the Church's outreach and worship, and invariably include prayer and religious messages; and

WHEREAS, the applicant states that the women's meetings, periodic social events, and select community efforts (such as blood drives and emergency response) also use the multi-purpose room and are necessary to meet the Church's programmatic needs; and

WHEREAS, the applicant represents that without an adequate multi-purpose room, as is the case with the Sanford Facility, members would be required to travel great distances, activities would be cancelled or poorly attended, and the ministries would be significantly impaired; and

WHEREAS, the applicant also submitted as-of-right plans reflecting a one-story church building with a floor area of 12,205 sq. ft. (0.50 FAR); and

WHEREAS, the applicant states that the as-of-right scenario fails to provide the required space, layout, and design to meet the programmatic needs of the Church; and

WHEREAS, specifically, the applicant states that the as-of-right building includes a total of ten Bible-study rooms totaling 2,222 sq. ft., while the proposed Chapel includes 17 Bible-study rooms totaling 4,980 sq. ft., each of which are necessary for the Church to meet its programmatic needs; and

WHEREAS, the applicant further states that the Bible-study rooms in the as-of-right scenario are forced to the center of the chapel around a multi-purpose room of insufficient size,

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where they will have no windows or natural light, and are too small to meet the Church's programmatic needs; and

WHEREAS, the as-of-right scenario provides a multi-purpose room of 1,108 sq. ft. with an occupancy of 93 persons while the proposed Chapel provides a multi-purpose room of 1,870 sq. ft. with an occupancy of 195 persons, which the applicant represents is the smallest possible size that accommodates the Church's need to provide adequate space for the youth and women's ministries, provide overflow seating, allow partitioning for additional teaching stations, and accommodate periodic fellowship activities of the entire congregation; and

WHEREAS, in contrast to the as-of-right scenario, the applicant states that the proposed Chapel will provide the additional space required for the Church to meet its programmatic needs; and

WHEREAS, in response to the Opposition's argument that the Church should redevelop the temporary Sanford Avenue site rather than pursuing the construction of the Chapel in the proposed location, the applicant states that an analysis of alternative properties where the Church "should" build its new chapel is irrelevant under the standards of review applicable to the subject variance, and cites to Community Synagogue v. Bates, 1 N.Y.2d 445 (1956) as establishing that municipal boards do not have the "unfettered power to say that the 'precise spot' selected is not the right one," with respect to religious and educational uses, and further cites to Matter of Hofstra Coll. v. Wilmerding, 24 Misc. 2d 248 (Sup. Ct. 1960) for the proposition that the "existence of other suitable, or more suitable sites, is totally irrelevant to the inquiry" concerning municipal approval of a religious or educational use; and

WHEREAS, nonetheless, the applicant notes that the Church explored in depth the option of redeveloping the Sanford Avenue site as an alternative to the purchase and development of a new site, but states that that option proved wholly impracticable for a variety of reasons, and the Church was forced to abandon the plan; and

WHEREAS, specifically, the applicant states that demolition and construction of a new chapel at the Sanford Avenue site would result in the displacement of the existing congregations during the demolition and construction for a significant and unendurable amount of time; and

WHEREAS, the applicant further states that the Sanford Avenue site is too shallow to support the proper layout and design for the Church to meet its programmatic needs, as it is not possible to align the multi-purpose room and sanctuary on the same level so that there is overflow space for the sanctuary, which would require the Church to build upward and stack the multi-purpose room on top of the sanctuary or vice versa, resulting in wasted space and the disruption of worship activities, particularly during congregational meetings; and

WHEREAS, finally, the applicant states that the need to stack the spaces in order to construct the chapel at the Sanford Avenue site would significantly increase construction costs, as the Church would be required to construct an additional, double-height level in the new building; and

WHEREAS, as to the Opposition's challenges to the Church's claimed programmatic needs, the applicant states that

the proposed Chapel is designed for long-term use and the Church forecasts the needs of the congregations to be served based on current use, growth projections, and the Church's experience operating thousands of similarly situated congregations that conduct identical worship services each week; and

WHEREAS, the Opposition contends that, based on the Church's governing handbooks, classes could be combined to reduce the number of Bible-study rooms; and

WHEREAS, in response, the applicant notes that the demographics of a congregation's ministries at any given point of time are inherently transitory and unreliable for planning purposes, as children grow, families move, new members join, and interest levels change; and

WHEREAS, the applicant states that nothing in the Church's governing handbooks authorizes combining classes across ministries, and therefore Primary classes cannot be combined with Sunday School classes, and young men's classes cannot be combined with young women's classes or the adult ministries; each ministry requires its own space for meetings during the second or third hours of the Sunday worship services, as well as for weekday gatherings; and

WHEREAS, the Opposition argues that the Church's programmatic needs could alternatively be satisfied by adding a few Bible-study rooms to the as-of-right design by replacing other required rooms with Bible-study rooms; and

WHEREAS, in response, the applicant states, as noted above, that the as-of-right scenario fails to meet the Church's programmatic needs because, in addition to the insufficient number of Bible-study rooms, the Bible-study rooms provided are too small and lack natural light, the multi-purpose room is too small, the room for the women's ministry is too small, and the Primary room is too small; and

WHEREAS, the applicant further states that the Opposition's suggestion that the multi-purpose room, a clergy interview room, and other allegedly non-essential space could be sacrificed partially or entirely discounts the religious importance of these other spaces, which are also necessary to meet the programmatic needs of the Church; and

WHEREAS, as noted above, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Church create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church is a not-for-profit organization and the

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proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, as to the finding under ZR § 72-21(c), the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is permitted in the subject zoning district; and

WHEREAS, in response to the Opposition's contention that the proposed Chapel is out of context with the surrounding area, the applicant states that the Chapel is consistent with the character of the existing surrounding community, which includes numerous other religious buildings and multi-story apartment buildings within a few blocks of the property, including a four-story apartment complex on the subject block; and

WHEREAS, the applicant further states that the subject lot is substantially larger than the surrounding developed lots because it was created from the combination of three residential lots, and therefore it can appropriately support a building that is larger than other buildings in the immediate vicinity; and

WHEREAS, the applicant notes that despite the fact that a variance is required for the additional FAR, the Chapel fits completely within the permitted building envelope at the site and complies with all other zoning regulations, including front yard, rear yard, side yards, lot coverage, parking, and sky exposure plane; and

WHEREAS, the applicant further notes that the steeple/spire is a permitted obstruction and therefore permitted as-of-right; and

WHEREAS, accordingly, the applicant states that the Church could essentially build an identical building as-of-right, with no visible differences from the outside, provided it omitted the second story inside to limit the FAR to 0.50; and

WHEREAS, the applicant states that the Chapel will be landscaped on all sides and submitted a landscaping plan reflecting that trees, shrubbery, flower gardens, a masonry wall, and decorative fencing will be provided to mitigate neighborhood concerns about bulk, to buffer noise, and to provide screening for surrounding properties; and

WHEREAS, the applicant further states that decorative metal gates will be provided at the front of each side yard to prevent unnecessary access, planted shrub heights in the side yards of three feet will be provided for additional privacy, and fully landscaped terracing will be provided in the front yard of the deck in order to break up the appearance of bulk from the street; and

WHEREAS, the applicant also represents that the Chapel will be a "green" facility, with the intention to seek LEED certification upon completion of construction; and

WHEREAS, the applicant states that the Chapel will also be developed with a 48-space below-grade parking garage that will provide sufficient parking for its members, and will limit any impact on parking on local streets; and

WHEREAS, as to traffic impacts, the applicant states that there will be little or no use of the Chapel at typical times of

high traffic during the weekday morning and evening rush hour periods, as weekday use of the Chapel will be limited to ministry activities for short periods during the early morning and evenings; and

WHEREAS, the applicant further states that the Chapel will generate the most traffic during its typical Sunday schedule of services, where a total of 38 vehicle trips are anticipated during the peak hour for traffic demand between 12:00 p.m. and 1:00 p.m., which is less than the CEQR threshold for quantitative traffic analysis; and

WHEREAS, the applicant notes that an FAR of 1.0 is also permitted for certain community facility uses, including the proposed Chapel, by a bulk modification special permit from the City Planning Commission pursuant to ZR § 74-901; and

WHEREAS, the applicant provided an analysis of the findings required to be made under ZR § 74-901, and represents that the proposed Chapel meets the requirements of the special permit such that it would qualify for a special permit to permit a community facility with an FAR of 1.0 in the subject district; and

WHEREAS, the Opposition argues that the proposed Chapel would undermine the Community Facility Reform Text Amendment of 2004 which limited the FAR for houses of worship to 0.50, and would set a precedent for other houses of worship; and

WHEREAS, in response, the applicant states that the effect of the subject text amendment on the R2A district was limited to parking requirements and permitted obstructions in the rear yard for houses of worship, and that the text amendment did not reduce the FAR for community facilities in the subject district; and

WHEREAS, the applicant notes that the Board reviews variance applications for religious uses in all zoning districts on a case-by-case basis and grants variances only when warranted under the criteria set forth in the Zoning Resolution and case law, and that the Board has reviewed and granted variances for houses of worship exceeding 0.50 FAR both before and after the adoption of the Community Facility Reform Text Amendment of 2004; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, as to the finding under ZR § 72-21(d), the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as to the finding under ZR § 72-21(e) requiring that the variance be the minimum necessary to afford relief, as noted above, the applicant originally proposed to construct a chapel with a floor area of 23,097 sq. ft. (0.95 FAR), which required two additional variances for a driveway in the front yard with a slope of 13.5 percent and a

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deck/covered parking in the side and rear yards exceeding the base plane which did not qualify as a permitted obstruction; and

WHEREAS, in response to concerns raised by the Board and the Opposition over the course of the hearing process, the applicant revised its plans on multiple occasions, ultimately reducing the floor area to 21,433 sq. ft. (0.877 FAR), eliminating the waivers related to the driveway grade and the yard obstruction, and also reducing the lot coverage, increasing the depth of the front yard, and reducing the height of the parapets at the street wall of the Chapel resulting in a net reduction in the elevation of the steeple base and the top of the steeple by three feet; and

WHEREAS, the applicant also submitted an analysis of the existing Sanford Facility and an as-of-right scenario and explained why each option is inadequate to satisfy the Church's programmatic needs, and also why redeveloping the Sanford Avenue site with a new facility is impracticable; and

WHEREAS, the Opposition contends that the proposed Chapel does not represent the minimum variance because there will be no more than 285 congregants in total for all three congregations when the facility is completed and therefore the main space of the Chapel does not need to accommodate a 350 person occupancy, as proposed; and

WHEREAS, in response, the applicant states that it projects facility needs and decides when to divide congregations based on average attendance, which means attendance will exceed the average as often as it falls below it and therefore there is a need to accommodate more attendance than just the average; and

WHEREAS, the applicant further states that the expected number of congregants who might use the building is 350, with one congregation in the sanctuary and another using the Bible-study rooms, and the multi-purpose room can be used by either congregation either as overflow for the sanctuary for one congregation or as an additional teaching station for another (while the other congregation is in the sanctuary); and

WHEREAS, the applicant represents that escalated growth is predicted in the Congregation upon completion of the proposed Chapel because, based on the Church's experience, families with children, the elderly and others with special needs that are put off by inadequate or overcrowded facilities return for meaningful spiritual experiences when a new chapel is constructed that accommodates their needs and alleviates crowding; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Church the relief needed both to meet its programmatic needs and to construct a building that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement, CEQR No. 12BSA039Q, dated November 9, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2A zoning district, a two-story building to be occupied by a church (Use Group 4), which does not comply with the underlying zoning regulations for FAR, contrary to ZR § 24-111, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 3, 2012" – Twenty (20) sheets; and *on further condition*:

THAT the building parameters will be: two stories; a maximum floor area of 21,433 sq. ft. (0.877 FAR); a lot coverage of 51 percent; a front yard with a depth of 32'-2"; two side yards each with a width of 11'-6"; a rear yard with a depth of 30'-0"; a total height of approximately 27'-4" at the side yards, 36'-4" at the center, 47'-3" at the top of the steeple base, and 91'-9" at the top of the steeple; and an accessory below-grade parking garage with 48 parking spaces, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant



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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2012.

## 31-12-BZ

### CEQR #12-BSA-077M

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application February 8, 2012 – Special Permit (§73-50) to seek a waiver of rear yard requirements (§33-292) to permit the construction of commercial building. C8-3 zoning district.

PREMISES AFFECTED – 280 West 155<sup>th</sup> Street, corner of Frederick Douglas Boulevard and West 155<sup>th</sup> Street, Block 2040, Lot 48, 61 & 62, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated January 9, 2012, acting on Department of Buildings Application No. 120927756, reads in pertinent part:

ZR 33-292 Provide 30' deep open area at a level not higher than curb level along rear boundary between commercial and residential district.; and

WHEREAS, this is an application under ZR §§ 73-50 and 73-03, to permit, on a site in a C8-3 zoning district abutting an R7-2 zoning district, the construction of a one-story commercial building which encroaches on a required 30-foot open area, contrary to ZR § 33-292; and

WHEREAS a public hearing was held on this application on May 15, 2012 after due notice by publication in *The City Record*, with a continued hearing on June 19, 2012, and then to decision on July 17, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Manhattan, recommends disapproval of this application based on the following concerns: (1) increased traffic from the parking; (2) the concentration of other supermarkets within the immediate area; and (3) the land could better serve the community if developed with a public service use; and

WHEREAS, Councilmember Inez E. Dickens recommends disapproval of this application, citing the same concerns raised by the Community Board; and

WHEREAS, the site is a corner lot located on the

south side of West 155<sup>th</sup> Street and Frederick Douglas Boulevard comprising three lots (lots 48, 61 and 62); and

WHEREAS, the site has 450 feet of frontage on West 155<sup>th</sup> Street, 49.92 feet of frontage on Frederick Douglas Boulevard, a depth of 99.92 feet, and a total lot area of 39,964 sq. ft.; and

WHEREAS, the subject site is vacant and currently used for off-street parking; and

WHEREAS, the subject site is located within a C8-3 zoning district that abuts an R7-2 zoning district to its rear; and

WHEREAS, pursuant to ZR § 33-292, an open area at curb level with a minimum depth of 30 feet is required on a zoning lot within a C8 district with a rear lot line that abuts the rear lot line of a zoning lot in a residential district; and

WHEREAS, on February 8, 2000, under BSA Calendar No. 45-99-BZ, the Board granted a special permit under ZR § 73-50 to construct a supermarket on lot 61 which encroached into the required open area; and

WHEREAS, the Board notes that the special permit has since lapsed and the owner has acquired two additional adjoining lots (lots 48 and 62); and

WHEREAS, the applicant proposes to construct a new three-story, 79,428 sq. ft. commercial building which will contain supermarket uses on the first and second floor, general commercial uses on the third floor, and 79 parking spaces in the cellar; and

WHEREAS, the first floor encroaches within the required 30 foot open area up to a height of 23 feet, contrary to ZR § 33-292; and

WHEREAS, under ZR § 73-50, the Board may grant a waiver of the open area requirements set forth in ZR § 33-29 in appropriate cases; and

WHEREAS, the applicant represents that the project site is located within an area identified as underserved in the FRESH food store program in the Zoning Resolution; and

WHEREAS, the applicant further represents that the uses adjacent to the required open area are buildings occupied with commercial and community facility uses; and

WHEREAS, the Board raised concerns regarding the proposed height of the one-story building at a height of 23 feet within the open area; and

WHEREAS, the Board questioned whether the height of the building within the open area could be reduced; and

WHEREAS, in response, the applicant submitted information showing that the space in the required open area would have a clear floor to ceiling height of 16 feet and that the area between 16 and 23 feet would be used for HVAC, utilities, and structural steel bar joists needed to span the space without the use of columns; and

WHEREAS, the applicant represents that the 16 feet floor to ceiling height is the minimum required to allow for product shelving, lights, air circulation and storage above shelves; and

WHEREAS, at hearing, the Board requested that the applicant provide information regarding the impacts of the portion of the building that occupies the required open area on the adjacent uses; and

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WHEREAS, in response, the applicant submitted cross sections showing the grade change between the subject and adjacent parcels and the height of the proposed building in relationship to the adjacent yards; and

WHEREAS, the Board notes that due to the grade change from West 155<sup>th</sup> Street, the effective height of the portion of the proposed building within the open area, when viewed from the adjoining parcels to the rear, is between 11'-6" and 15'-0" in height, as compared to the actual height of 23'-0"; and

WHEREAS, the applicant represents that due to the change in grade between parcels there would be minimal impact on the adjacent uses at the rear of the site; and

WHEREAS, therefore, the Board finds that the waiver to the required open area will not have an adverse affect on the surrounding area; and

WHEREAS, in response to the concerns raised by the Community Board and Councilmember related to traffic, the Board notes that an Environmental Assessment Statement was conducted and found that there would be no impact on traffic; and

WHEREAS, as to the concerns about the site being used for a public service use rather than a supermarket, the Board notes that the use is allowed as of right in the C8-3 zoning district and that the Board limits its review to the waiver requested under the special permit; and

WHEREAS, therefore the Board has determined that the application meets the requirements of ZR §73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of ZR §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§73-50 and 73-03.

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA077M, dated February 8, 2012; and

WHEREAS, the EAS documents that the operation of the bank would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-50 and 73-03, to permit, on a lot within a C8-3 zoning district abutting an R7-2 zoning district, the construction of a three-story commercial building, in which one story will encroach within the 30-foot open area required by ZR § 33-292, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received July 3, 2012" – eighteen (18) sheets; and *on further condition*;

THAT the height of the building within the open area will be limited to 23'-0";

THAT no mechanical equipment will be located on the roof of the building within the 30'-0" open area;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2012.

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## 91-12-BZ

APPLICANT – Jorge Lee, for Juan Noboa, owner.

SUBJECT – Application April 11, 2012 – Re-instatement (§11-411) of a previously approved variance permitting commercial retail (UG 6) in a residential district, which expired on March 29, 1998. R8 zoning district.

PREMISES AFFECTED – 846 Gerard Avenue, east side of Gerard Avenue, 132.37' south of East 161<sup>st</sup> Street, Block 2474, Lot 35, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough

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Commissioner, dated March 13, 2012, acting on Department of Buildings Application No. 220172578, reads in pertinent part:

- Substantiate legality of existing building layout.
- 1) Provide BSA certificate describing the parameter for the legal use of the commercial use in a residential district.
  - 2) Provide drawing for existing conditions as approved by the Board of Standards and Appeals; and

WHEREAS, this is an application for a reinstatement and an extension of term for a prior Board approval of a commercial retail building (Use Group 6) in a residential district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in the *City Record*, and then to decision on July 17, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, the premises is located on the east side of Gerard Avenue between East 158<sup>th</sup> Street and East 161<sup>st</sup> Street, within an R8 zoning district; and

WHEREAS, the site consists of a one-story commercial building occupied by three separate stores; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 21, 1949 when, under BSA Cal. No. 1003-48-BZ, the Board granted a variance to permit the construction of a one-story retail building in a residential district, for a term of ten years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on February 5, 1988, the Board granted a ten-year extension of term, which expired on March 29, 1997; and

WHEREAS, the term of the variance has not been extended since its expiration on March 29, 1997, and

WHEREAS, the applicant represents, however, that the use of the site as a commercial building was continuous from the time of the initial grant until February 26, 2011 when the Department of Buildings (“DOB”) issued a vacate order for the three stores as a result of a fire which partially damaged the roof structure in one of the stores; and

WHEREAS, the applicant represents that an application was filed to repair the damaged roof, however, the owner must reinstate the subject grant and obtain a new certificate of occupancy before DOB will lift the vacate order and allow the owner to repair the roof; and

WHEREAS, accordingly, the applicant now proposes to reinstate the prior grant; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

*Therefore it is Resolved* that the Board of Standards and

Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit, within an R8 zoning district, the reinstatement of a prior Board approval of a commercial building (Use Group 6) at the subject site, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received April 11, 2012”-(3) sheets; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on July 17, 2022;

THAT all signage will comply with C1 district regulations;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2012.

## 111-12-BZ

### CEQR #12-BSA-121M

APPLICANT – Eric Palatnik, P.C., for Wells 60 Broad Street, LLC, owner; Bree and Oliver NYC Inc., lessee.

SUBJECT – Application April 19, 2012 – Special Permit (§73-36) for a physical culture establishment (*Cross Fit Wall Street*). C5-5 (LM) zoning district.

PREMISES AFFECTED – 60 New Street, 54-68 Broad Street; 52-66 New Street, north of Beaver Street, Block 24, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 9, 2012, acting on Department of Buildings Application No. 121020064, reads in pertinent part:

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# MINUTES

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Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-5 zoning district within the Special Lower Manhattan District, the operation of a physical culture establishment (PCE) on a portion of the ground floor of a 38-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in *The City Record*, and then to decision on July 17, 2012; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of New Street and Beaver Street, in a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the site has approximately 222 feet of frontage on New Street, 246 feet of frontage on Beaver Street, 214 feet of frontage along Broad Street, and a total lot area of 46,645 sq. ft.; and

WHEREAS, the proposed PCE will occupy 2,082 sq. ft. of floor area on the ground floor; and

WHEREAS, the PCE will be operated as Cross Fit Wall Street; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:00 a.m. to 7:00 p.m.; with limited weekend hours by appointment; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant states that the proposed PCE will not have any adverse effect on the goals of the Special Lower Manhattan District and its proposed ground floor use will be in context with ground floor commercial establishments in other buildings in this area; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the

community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA121M, dated April 11, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C5-5 zoning district within the Special Lower Manhattan District, the operation of a PCE on a portion of the ground floor of a 38-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 9, 2012" - Two (2) sheets, and *on further condition*:

THAT the term of this grant will expire on July 17, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by

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# MINUTES

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 17, 2012.

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## 93-11-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district.

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Moshe M. Friedman, Jane Carey, Yidel Perlstein and Jack Misashin.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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## 113-11-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Patrick’s Home for the Aged and Infirm, owners.

SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.

PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.

### COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Neil Weisbard and Sister Patrick Michael.  
For Opposition: Eugene Travers.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for continued hearing.

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## 117-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (§72-21) to permit the development of a new athletic center accessory to an existing UG 3 school (*Mary Louis Academy*), contrary to maximum height and sky exposure plane (§24-521), minimum rear yard, (§24-382) minimum front yard (§24-34) and nameplates or identification signs (§22-321). R1-2 and R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

### COMMUNITY BOARD # 8Q

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for decision, hearing closed.

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## 165-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to July 24, 2012 at 1:30 P.M., for adjourned hearing.

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## 178-11-BZ

APPLICANT – Eric Palatnik, P.C., for Elie Zeitoune, owner.

SUBJECT – Application November 29, 2011 – Special Permit (§73-622) for the enlargement of an existing two story, semi-detached single family home, contrary to floor area and open space (§23-141(b)); side yard (§23-461) and rear yard (§23-47) requirements. R5 zoning district.

PREMISES AFFECTED – 1944 East 12<sup>th</sup> Street, between Avenue S and T, Block 7290, Lot 24, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August

# MINUTES

21, 2012, at 1:30 P.M., for continued hearing.

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**191-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zerillo Family Trust, owner.

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to maximum allowable floor area (§23-141(b)). R 4-1 zoning district.

PREMISES AFFECTED – 1246 77<sup>th</sup> Street, between 12<sup>th</sup> and 13<sup>th</sup> Avenues, Block 6243, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for decision, hearing closed.

-----  
**5-12-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Aaron Herzog, owner.

SUBJECT – Application January 12, 2012 – Variance (§72-21) for the addition of a third floor to an existing two family residential building, contrary to front yard requirements (§23-146(c)), front yards and side yard requirement (§23-146(d)). R5 zoning district/Borough Park.

PREMISES AFFECTED – 812 Dahill road, northwest corner of Dahill Road and 19<sup>th</sup> Avenue, Block 5445, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for decision, hearing closed.

-----  
**9-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278,

Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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**23-12-BZ**

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for decision, hearing closed.

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**43-12-BZ**

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Raymond Levin and Jack Freeman.

For Opposition: Suzanne Stewart and Caspar Luard.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

-----  
**48-12-BZ**

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations (§121-11). C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of Manhattan.

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# MINUTES

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## COMMUNITY BOARD #4M

### APPEARANCES –

For Applicant: Peter Geis and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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## 87-12-BZ

APPLICANT – Troutman Sanders, LLP, for A & J Properties, LLC, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application April 11, 2012 – Special Permit (§73-36) to permit the continued operation of the existing physical culture establishment (*Bally Total Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 1720-28 Sheepshead Bay Road, 123.21' south of the intersection of Vorhies Avenue, Block 8770, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Jeremich M. Candreva.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4  
Absent: Commissioner Ottley-Brown.....1  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 97, No. 31

August 1, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

---

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148-10-BZ           1559 East 29<sup>th</sup> Street, Brooklyn

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# DOCKET

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New Case Filed Up to July 24, 2012

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**210-12-BZ**

44 West 28th Street, between Broadway and Avenue of the Americas, Block 829, Lot(s) 68, Borough of **Manhattan, Community Board: 5**. CrossFit Physical culture establishment to be located on second story of existing 16-story building. Some CrossFit classes are currently being held at the site. C6-4X and M1-6 district.

-----

**233-12-BZ**

246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue., Block 13622, Lot(s) 7, Borough of **Queens, Community Board: 13**. Variance (§72-21) to legalize an advertising sign in a residential zone, contrary to use regulations, ZR 22-00. R3X zoning district. R3X district.

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**234-12-BZ**

1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, approx. 385' north of intersection of Basset Avenue and Eastchester Road., Block 4226, Lot(s) 16, Borough of **Bronx, Community Board: 11**. Special permit to allow physical culture establishment within proposed seven-story enlargement of existing two-story building. M1-1 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**AUGUST 14, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 14, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **68-94-BZ**

APPLICANT – Troutman Sanders, LLP, for Bay Plaza Community Center, LLP, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application June 26, 2012 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Bally's Total Fitness*) on the first and second floors of the Co-Op City Bay Plaza Shopping Center which expired on June 16, 2012; Waiver of the Rules.C4-3/M1-1 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Baychester Avenue and The Hutchinson River Parkway, Block 5141, Lot 810, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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### **53-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Charter Management Group, LLC, owner; Eun Sung, Inc., lessee.

SUBJECT – Application April 27, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Silver Star Spa*) in a portion of the first and cellar floors of an existing commercial building which expired on July 10, 2010; Waiver of the Rules. C5-3/C6-4,5 (MID) zoning district.

PREMISES AFFECTED – 6 West 48<sup>th</sup> Street, located on the south of West 48<sup>th</sup> Street between Fifth and Sixth Avenues, Block 1263, Lot 43, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **164-07-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center LLC, owner; ME Clinic Two LLC, lessee.

SUBJECT – Application April 23, 2012 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*Massage Envy*). The amendment seeks to enlarge the use. C4-1 district.

PREMISES AFFECTED – The Crossings @ Staten Island Mall (280 Marsh Avenue), north of Platinum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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## **APPEALS CALENDAR**

### **172-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Folarunso Ovalabu, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking determination that the owner of the premises has acquired a common law vested rights to complete construction under the prior R3-2 zoning. R3A zoning district.

PREMISES AFFECTED – 119-43 197<sup>th</sup> Street, south of intersection of east side of 197<sup>th</sup> Street and south side of 119<sup>th</sup> Avenue, Block 12653, Lot 42, Borough of Queens.

**COMMUNITY BOARD #12Q**

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### **21-12-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of a accessory swimming pool partially within the bed of a mapped street contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### **146-12-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Gayle & Paul Degrazia, lessees.

SUBJECT – Application May 8, 2012 – Proposed alteration and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law and the proposed upgrade of the existing non-conforming private disposal system partially in the bed of the service road is contrary to Building Department policy. R4 zoning district.

PREMISES AFFECTED – 15 Beach 220<sup>th</sup> Street, east side of Beach 220<sup>th</sup> Street, 168.5' north of 4<sup>th</sup> Avenue, Block 16350, Lot p/o400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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# CALENDAR

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**AUGUST 14, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, August 14, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**66-12-BZ**

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to modify the applicable requirements of the Zoning Resolution for use (ZR§22-10), lot coverage (ZR§24-11) and parking (ZR§25-23) to facilitate development of a mixed use building containing a FRESH Program food store, a privately operated preschool and 164 non-subsidized, middle income apartments. R7A, R8A/C2-4 zoning districts. PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121<sup>st</sup> Street and W. 122<sup>nd</sup> Street, Block 1948, Lot 30, 35, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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**73-12-BZ**

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*) in a C2-2 district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41<sup>st</sup> Avenue and 42<sup>nd</sup> Avenue, Block 6290, Lot 5, Borough of Queens.

**COMMUNITY BOARD #11Q**

-----

**160-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CP Associaes LLC c/o Jeffrey Mgmt., owner; Blink 820 Concourse Inc., lessee.

SUBJECT – Application May 25, 2012 – Special Permit to allow Physical Culture Establishment (*Blink*) within existing commercial building.

PREMISES AFFECTED – 820 Concourse Village West, east side of Concourse Village West, 312.29' south of intersection of Concourse Village West and East 161<sup>st</sup> Street, Block 2443, Lot 91, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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**163-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Application for a variance to allow the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center contrary to rear yard equivalent, height, lot coverage, and tower coverage (ZR 24-382, 24-522, 24-11, 24-54). R8 zoning district.

PREMISES AFFECTED – 435 East 30<sup>th</sup> Street, East 34<sup>th</sup> Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30<sup>th</sup> Street and First Avenue, Block 962, Lot 80, 108, 1001-1107, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, JULY 24, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

### SPECIAL ORDER CALENDAR

#### 319-53-BZ

APPLICANT – Ficara & Associates, P.C., by Majed El  
Jamal, for 22<sup>nd</sup> Street Realty LLC, owner.

SUBJECT – Application August 16, 2011 – Extension of  
Term (§11-411) for the continued operation of an  
automotive repair shop with no body work which expired on  
January 31, 2011; Waiver of the Rules. R5 zoning district.  
PREMISES AFFECTED – 1135 East 222<sup>nd</sup> Street,  
northwest corner of Eastchester Road, Block 4900, Lot 12,  
Borough of Bronx.

#### COMMUNITY BOARD #12BX

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on  
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of term for an automobile repair shop, which  
expired on January 31, 2011; and

WHEREAS, a public hearing was held on this  
application on April 3, 2012, after due notice by publication  
in *The City Record*, with continued hearings on May 8, 2012  
and June 19, 2012, and then to decision on July 24, 2012; and

WHEREAS, the premises and surrounding area had site  
and neighborhood examinations by Commissioner Hinkson,  
Commissioner Montanez, and Commissioner Ottley-Brown;  
and

WHEREAS, Community Board 12, Bronx,  
recommends approval of this application; and

WHEREAS, the site is a triangular-shaped lot with 125  
feet of frontage on the west side of Eastchester Road and  
125 feet of frontage on the east side of East 222<sup>nd</sup> Street,  
within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the  
subject site since January 31, 1961 when, under the subject  
calendar number, the Board granted a variance to permit the  
construction of a gasoline service station with accessory uses in  
a retail use district, for a term of 20 years; and

WHEREAS, subsequently, the grant was amended and  
the term extended at various times; and

WHEREAS, most recently, on April 29, 2003, the Board

granted an extension of term and an amendment to permit the  
change of use from an automotive service station (Use Group  
16B) to an automotive repair shop with no body repairs (Use  
Group 16B), which expired on January 31, 2011; and

WHEREAS, the applicant now seeks an additional  
extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant  
to confirm that it complies with C1 district signage regulations,  
remove the tire storage apparatus from the site, remove the  
encroachment onto the sidewalk at the northwest corner of the  
site, and relocate the dumpster; and

WHEREAS, in response, the applicant submitted a  
signage analysis and photographs reflecting that signage  
complies with C1 district regulations, and that the tire storage  
apparatus and encroachment onto the sidewalk have been  
removed; and

WHEREAS, as to the dumpster, the applicant states that  
it will store the dumpster indoors during non-business hours,  
but requests that it be permitted to maintain the dumpster at its  
current location during business hours; and

WHEREAS, the applicant submitted revised plans with a  
note stipulating that the dumpster will be stored indoors during  
non-business hours; and

WHEREAS, based upon its review of the record, the  
Board finds that the requested extension of term is appropriate  
with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*  
and *amends* the resolution, dated January 31, 1961, so that as  
amended this portion of the resolution shall read: “to extend the  
term for a period of ten years from January 31, 2011, to expire  
on January 31, 2021; *on condition* that any and all work shall  
substantially conform to drawings as they apply to the  
objections above noted, filed with this application marked  
‘Received April 23, 2012’-(1) sheet and ‘June 8, 2012’-(1)  
sheet; and *on further condition*:

THAT the term of this grant will expire on January 31,  
2021;

THAT the site will be maintained free of debris and  
graffiti;

THAT the dumpster will be stored indoors during non-  
business hours;

THAT all signage will comply with C1 district  
regulations;

THAT the above conditions will appear on the  
certificate of occupancy;

THAT all conditions from the prior resolution not  
specifically waived by the Board remain in effect; and

THAT this approval is limited to the relief granted by the  
Board in response to specifically cited and filed DOB/other  
jurisdiction objection(s) only;

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”

# MINUTES

(DOB Application. No. 200767679 )  
Adopted by the Board of Standards and Appeals, July  
24, 2012.

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## 120-02-BZ

APPLICANT – Stuart Klein, Esq., for East Village Gardens Corp., owner; Muscles Metamorphosis, lessee.

SUBJECT – Application March 22, 2012 – Extension of Term of previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Iron & Silk Fitness Center*) which expired on February 1, 2012; an Amendment for the change in ownership; waiver of the rules. R7A zoning district.

PREMISES AFFECTED – 42-46 Avenue A, corner of Avenue A and East 3<sup>rd</sup> Street, Block 399, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jay Goldstein.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on February 1, 2012, and an amendment to reflect a change in the ownership and operation of the PCE; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, and then to decision on July 24, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 3, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the northeast corner of Avenue A and East 3<sup>rd</sup> Street, within an R7A zoning district; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies 3,300 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 3, 2003 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on February 1, 2012; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since

the prior grant; and

WHEREAS, the PCE is now operated as Iron & Silk Fitness; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, the applicant also seeks to legalize minor modifications to the previously-approved plans, including the addition of new partitions in the locker room for added privacy, and a new partition on the gym floor to create a classroom for group exercise; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previous grant are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on June 3, 2003, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from February 1, 2012, to expire on February 1, 2022, and to permit the noted change in the ownership and operation of the PCE and the modifications to the previously-approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received May 23, 2012’- (1) sheet and ‘July 5, 2012’-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 1, 2022;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 102493730)

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## 238-07-BZ

APPLICANT – Goldman Harris, LLC, for OCA Long Island City, LLC; OCA Long Island City II, LLC, owner; OCA Long Island City III, LLC, lessee.

SUBJECT – Application May 25, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a 13-story residential and community facility building which expires on September 28, 2012. M1-4/R6A(LIC) & M1-4 zoning district.

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PREMISES AFFECTED – 5-11 47<sup>th</sup> Avenue, western half of block bounded by 46<sup>th</sup> Road, 47<sup>th</sup> Avenue, Vernon Boulevard and 5<sup>th</sup> Street. Block 28, Lots 12, 15, 17, 18, 21 & 121, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Eugene Travers.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance which permitted, on a site partially in an M1-4 zoning district and partially in an M1-4/R6A district within the Special Long Island City Mixed-Use District, the construction of a 12-story mixed-use residential/commercial retail building (the “Mixed-Use Building”) and a six-story student dormitory building (the “Dormitory Building”) for the City University of New York (“CUNY”) Graduate Center, contrary to use and bulk regulations; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, and then to decision on July 24; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is a through-block site bounded by Fifth Street to the west, 46<sup>th</sup> Road to the north, and 47<sup>th</sup> Avenue to the south, with a total lot area of 66,838 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since September 23, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of a 12-story mixed-use residential/commercial retail building and a six-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage, contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, and 23-711; and

WHEREAS, substantial construction was to be completed by September 23, 2012, in accordance with ZR § 72-23; and

WHEREAS, a letter of substantial compliance was issued by the Board on June 10, 2009, to permit certain modifications to the approved plans, and to acknowledge that although the project was originally filed at the Department of Buildings (“DOB”) under a single permit application (NB # 402661945), the project was subsequently filed as two separate projects, with the Mixed-Use Building retaining the original application number, and the Dormitory Building filed under new NB # 420006111; and

WHEREAS, a second letter of substantial compliance was issued by the Board on December 8, 2009, stating that the

Board has 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 the two buildings; and

WHEREAS, the applicant states that the issuance of the December 8, 2009 letter was based on the anticipated occupancy of the Dormitory Building by the CUNY Graduate Center; however, subsequent to the issuance of the letter, the CUNY Graduate Center withdrew from the project; and

WHEREAS, most recently, on February 15, 2011, the Board granted an amendment to clarify that either the Mixed-Use Building or the Dormitory Building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; and

WHEREAS, the applicant notes that the February 15, 2011 amendment allows each building to proceed independently and provides flexibility for the commencement of construction at the earliest possible time; and

WHEREAS, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant states that additional time is necessary to complete construction due to financing delays and the need to find an institutional user for the Dormitory Building subsequent to the CUNY Graduate Center’s withdrawal from the project; and

WHEREAS, specifically, the applicant states that it has been actively seeking a new institutional user for the Dormitory Building, and that it cannot secure the financing needed to construct the Dormitory Building until such a user is identified; and

WHEREAS, the applicant states that construction was also delayed due to the need to perform required environmental remediation on the site, which was completed and a Notice of Certificate of Completion received from the New York State Department of Environmental Conservation in April 2011; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 2008, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction and obtain a certificate of occupancy for a term of four years, to expire on September 23, 2016; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction will be completed and a certificate of occupancy obtained by September 23, 2016;

THAT any change to the program shall be subject to Board review and approval and that the process for such review shall be determined by the Board;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure

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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 plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 402661945)

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## 238-08-BZ

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application May 25, 2012 – Request for rehearing pursuant to Section 1-10(e) of the Board's Rules of Practice and Procedure for a variance application to allow a new residential building, contrary to use regulations (§42-00). M1-1/R2 zoning district.

PREMISES AFFECTED – 876 Kent Avenue, west side of Kent Avenue, 91’ north of Myrtle Avenue, Block 1897, Lot 56, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-hearing, pursuant to Section 1-10(e) of the Board’s Rules of Practice and Procedure, of a variance application which the Board previously dismissed for lack of prosecution; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in The City Record, then to closure and decision on the same date; and

WHEREAS, the subject site is located on the west side of Kent Avenue, between Park Avenue and Myrtle Avenue, partially within an M1-1 zoning district and partially within a C2-3 (R6) zoning district; and

WHEREAS, the site has a width of 25 feet, a depth of 90 feet, and a total lot area of 2,250 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, on September 19, 2008, an application was made under the subject calendar number for a variance pursuant to ZR § 72-21; the application sought approval for the construction of a four and one-half story residential building, contrary to ZR § 42-00; and

WHEREAS, on February 23, 2010, the Board dismissed the application for lack of prosecution based on the applicant’s failure to respond to the Board’s Notice of Objections which requested, among other things: (1) a revised statement of facts and findings; (2) a revised economic analysis; (3) revised plans; (4) a revised Environmental Assessment Statement; and (5) a lesser

variance scenario; and

WHEREAS, the applicant asserts that there has been a material change in plans since the Board’s dismissal of the variance application in 2010 and requests that the Board rehear the case pursuant to Section 1-10(e) of the Rules of Practice and Procedure which provides: “A request for a rehearing shall not be granted unless substantial new evidence is submitted that was not available at the time of the initial hearing, or there is a material change in plans or circumstances or an application is filed under a different jurisdictional provision of the law”; and

WHEREAS, the applicant asserts that there has been a material change in plans and thus a re-hearing of the use variance is warranted; and

WHEREAS, specifically, the applicant states that it has modified the proposal to reflect a reduction in the floor area, FAR, and lot coverage, and an increase in the open space, rear yard depth, and rear setback as compared to the original proposal; and

WHEREAS, the applicant states that the new proposal reflects a four-story, four unit residential building which complies with all bulk regulations for a Quality Housing building in an R6 zoning district, with the exception of street wall location, as opposed to the original application which did not comply with the R6 district Quality Housing regulations with regard to floor area, FAR, rear setback, and street wall location; and

WHEREAS, the Board has reviewed the record and determined that the applicant has provided substantial evidence which supports the conclusion that there is a material change in plans since the 2008 application; and

WHEREAS, the Board notes that the 2008 application was dismissed for lack of prosecution and that the applicant has agreed to re-submit a complete variance application which provides the documentation requested and addresses the concerns raised in the Notice of Objections issued by the Board pursuant to the 2008 application; and

*Therefore it is Resolved* that, based upon the above, this application for a re-hearing of the BSA Cal. No. 238-08-BZ is granted.

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## 311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

APPEARANCES –



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For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for adjourned hearing.

## 301-85-BZ

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment of a variance (§72-21) which permitted limited retail use in the ground floor and cellar retail within a five story and penthouse residential building. The amendment seeks to expand the uses conditioned by the Board to include other retail (UG 6) uses. R10 (PI) zoning district.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino, Gerald Rothstein and Tzivya Lernse.

For Opposition: Noel Rimolovski, Richard Jacobson, Robert Leighton, Andrew V. McQuiuing and Lo Van der Valk.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for continued hearing.

## 71-93-BZ

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application January 23, 2012 – Amendment of a variance (§72-21) to allow a 243 sq. ft. addition to an existing house, contrary to front yard (§23-45(a); floor area and lot coverage (§23-141(b)) requirements. R2A zoning district.

PREMISES AFFECTED – 153-01 Bayside Avenue, 308.25' west of 154<sup>th</sup> Street, between 29<sup>th</sup> Avenue and Bayside Avenue, Block 4835, Lot 25, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Paul F. Bonfilio.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for decision, hearing closed.

## 336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on June 8, 2011. C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 17-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Richard and Michelle Kourbage, owners.

SUBJECT – Application January 24, 2012 – Proposed building is not fronting a mapped street, contrary to § 36 General City Law and in the bed of a mapped street, contrary to Art. §35 of the General City Law. Private disposal system in the bed of a mapped street contrary to Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 409 Seabreeze Walk, north side of Seabreeze Walk, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 18, 2012, acting on Department of Buildings Application No. 420502511, reads in pertinent part:

- A1- The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law
- A2- The site and building is fronting on an official mapped street therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York.
- A3- Private disposal system in the bed of a

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mapped street contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, hearing closed and then to decision on July 24, 2012; and

WHEREAS, by letter dated July 23, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, by letter dated February 8, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated June 13, 2012, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated January 18, 2012, acting on Department of Buildings Application No. 420502511, is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 10, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## 18-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Dennis Dorizas, lessee.

SUBJECT – Application January 24, 2012 – Proposed building is not fronting a mapped street, contrary to §36 General City Law. R4 zoning district.

PREMISES AFFECTED – 377 Bayside Avenue, Block 16340, Lot 50, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 18, 2012, acting on Department of Buildings Application No. 420512305, reads in pertinent part:

The site and building is fronting on an official mapped street therefore, no permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, and then to decision on July 24, 2012; and

WHEREAS, by letter dated July 23, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated January 18, 2012, acting on Department of Buildings Application No. 420512305, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 10, 2012” - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure

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compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT the home shall be sprinklered in accordance with the BSA-approved plans;  
and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## **149-05-A**

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application which expired on May 12, 2007. R2A Zoning District.

PREMISES AFFECTED – 32-09 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

### **COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Trevis Savage.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for continued hearing.

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## **125-11-A**

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for deferred decision.

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## **155-11-A**

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for deferred decision.

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## **162-11-A**

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Kathlyn Schwartz.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for adjourned hearing.

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## **103-12-A**

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

### **COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Enid Braun and Scott Oliver.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for continued hearing.

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## **155-12-BZY**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 511 Property LLC, owner.

SUBJECT – Application May 11, 2012 – Extension of time (§11-332) to complete construction of a minor development commenced prior to a zoning text amendment related to parking. C1-7(A) Special Hudson Zoning District.

PREMISES AFFECTED – 511 Ninth Avenue, southwest corner of Ninth Avenue and West 39<sup>th</sup> Street (block bounded by West 38<sup>th</sup> Street and 10<sup>th</sup> Avenue), Block 736, Lot 33,

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Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Robin Kramer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, JULY 24, 2012 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19<sup>th</sup> Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, July 24, 2012.

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### 58-12-BZ

### CEQR #12-BSA-091K

APPLICANT – Law Office of Fredrick A. Becker, for Shlomo Dabah, owner.

SUBJECT – Application March 15, 2012 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and opens space (§23-141); side yards (§23-461); less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3960 Bedford Avenue, west side of Bedford Avenue between Avenue R and Avenue S, block 6830, Lot 30, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 16, 2012, acting on Department of Buildings Application No. 320303523, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required
3. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted
4. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required
5. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 19, 2012 after due notice by publication in *The City Record*, and then to decision on July 24, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of

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Bedford Avenue, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,948 sq. ft. (0.49 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,948 sq. ft. (0.49 FAR) to 2,829 sq. ft. (0.71 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 59 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-10" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 6, 2012"-(6) sheets and "July 10, 2012"-(4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the

building: a maximum floor area of 2,829 sq. ft. (0.71 FAR); a minimum open space of 59 percent; a maximum lot coverage of 41 percent; a side yard with a minimum width of 4'-10" along the northern lot line; a side yard with a width of 8'-0" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## **64-12-BZ CEQR #12-BSA-096Q**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16302 Jamaica LLC, owner; Blink Jamaica Avenue, Inc., lessee.

SUBJECT – Application March 20, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*) within portions of an existing building. C6-3(DP) zoning district.

PREMISES AFFECTED – 163-02 Jamaica Avenue, southeast corner of intersection of Jamaica and Guy R. Brewer Boulevard, block 10151, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 13, 2012, acting on Department of Buildings Application No. 420537137, reads in pertinent part:

Proposed physical culture establishment in a C6-3 zoning district is contrary to 32-10 ZR and requires a special permit from the BSA (73-36 ZR); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-3 zoning

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district within the Special Downtown Jamaica District, the operation of a physical culture establishment (PCE) on a portion of the first floor and the entire second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 10, 2012, and then to decision on July 24, 2012; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chairperson Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the southeast corner of Jamaica Avenue and Guy R. Brewer Boulevard, in a C6-3 zoning district within the Special Downtown Jamaica District; and

WHEREAS, the site has approximately 126 feet of frontage on Jamaica Avenue and approximately 176 feet of frontage on Guy R. Brewer Boulevard, and a total lot area of 22,125 sq. ft.; and

WHEREAS, the proposed PCE will occupy 16,519 sq. ft. of floor area on a portion of the first floor and the entire second floor; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Saturday, from 5:30 a.m. to 11:00 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant states that the proposed PCE will comply with the goals of the Special Downtown Jamaica District; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA096Q, dated March 16, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C6-3 zoning district within the Special Downtown Jamaica District, the operation of a PCE on a portion of the first floor and the entire second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 18, 2012" - Four (4) sheets, and *on further condition*:

THAT the term of this grant will expire on July 24, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

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THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2012.

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## 165-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to August 14, 2012 at 1:30 P.M., for continued hearing.

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## 168-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*), contrary to floor area (§§113-11, 503, 51, 77-02, 23-141, 24-11), open space and lot coverage (§§23-141, 24-11, 77-02, 113-11), front, side and rear yard (§§113-11, 503, 543, 77-02, 23-464, 47, 471), height and setback (§§113-11, 503, 55, 77-02, 23-631, 633, 24-593), planting and landscaping (§§113-12, 23-45, 23-451, 113-30) and parking (§§113-58, 25-31) regulations.

R5, R6A, and R5 (Ocean Parkway Special District) zoning district.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel and Michael Goldblum,

For Opposition: Stuart A. Klein.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for continued hearing.

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## 193-11-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot

coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for decision, hearing closed.

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## 10-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.

SUBJECT – Application January 18, 2012– Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling, contrary to front yard (§23-45) and side yard (§23-461) regulations. R-5 zoning district.

PREMISES AFFECTED – 114-01 95<sup>th</sup> Avenue, northeast corner of 95<sup>th</sup> Avenue and 114<sup>th</sup> Street, Block 9400, Lot 37, Borough of Queens.

### COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for continued hearing.

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## 13-12-BZ

APPLICANT – Georgios Georgopoulos, for Abumuktadir Rahman, owner.

SUBJECT – Application January 20, 2012 – Variance (§72-21) to permit the legalization and enlargement of a mosque (*Astoria Islamic Center*), contrary to front yard (§24-34), side yard (§24-35), and parking (§25-31) regulations. R5B zoning district.

PREMISES AFFECTED – 22-21 33<sup>rd</sup> Street, east side of 33<sup>rd</sup> Street, 200’ south of corner formed by the intersection of Ditmars Boulevard and 33<sup>rd</sup> Street, Block 832, Lot 22, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Isabel Bucaram, Mohammad A. Kuddus, S. A. Islam and Abu Shakir.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing

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closed.

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**65-12-BZ**

APPLICANT – Lewis E. Garfinkel, for Yisroel Brodt, owner.

SUBJECT – Application March 20, 2012 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1140 East 28<sup>th</sup> Street, west side of East 28<sup>th</sup> Street, 313’ south of Avenue K, Block 7627, Lot 62, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for continued hearing.

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**70-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for C.S. Edward Kang, owner; Aqua Studio NY LLC, lessee.

SUBJECT – Application March 23, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Aqua Studio NY LLC*). C6-2A zoning districts.

PREMISES AFFECTED – 78 Franklin Street, between Broadway and Church Street, Block 175, Lot 4, Borough of Manhattan.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Francis R. Angelino, P. Oubuckowski, and Esther Gauthier.

For Opposition: N. Mario Rivelli and William Bott.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 14, 2012, at 1:30 P.M., for decision, hearing closed.

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**76-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #15K**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to September 11, 2012 at 1:30 P.M., for continued hearing.

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**105-12-BZ**

APPLICANT – Zaskorski & Notaro Architects, for Alan Mucatel, owner.

SUBJECT – Application April 17, 2012 – Variance (§72-21) to permit the installation of a new elevator within an existing school (*Katharine Dodge Brownell Preschool*), contrary to front yard (§24-33) and lot coverage (§24-11) regulations. R5 zoning district.

PREMISES AFFECTED – 450 Castle Hill Avenue, southeast corner of Castle Hill and Lacombe Avenues, Block 3511, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Carlo Zaskorski and Alan Mucatel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for decision, hearing closed.

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**107-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Third Avenue Tower LLC, owner; Blink 600 Third Avenue Inc, lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*). C5-3, C2.5 and R8B (MiD) zoning district.

PREMISES AFFECTED – 600/18 Third Avenue, aka 159/65 E. 39<sup>th</sup> Street, aka 150/2 East 40<sup>th</sup> Street, west side of 3<sup>rd</sup> Avenue between E. 39<sup>th</sup> Street and E. 40<sup>th</sup> Street, Block 895, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for decision, hearing closed.

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**116-12-BZ**

APPLICANT – Francis R. Angelino, Esq., for Spring Swinehart et al., owner; Exceed Fitness, LLC, lessee.

SUBJECT – Application April 24, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Exceed Fitness*). C1-9 zoning district.

PREMISES AFFECTED – 1477 Third Avenue, between E.



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83<sup>rd</sup> and E. 84<sup>th</sup> Streets, Block 1529, Lot A, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**\*CORRECTION**

This resolution adopted on April 3, 2012, under Calendar No. 148-10-BZ and printed in Volume 97, Bulletin No. 15, is hereby corrected to read as follows:

**148-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Giselle E. Salamon, owner.

SUBJECT – Application June 23, 2011 – Amendment to an approved special permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141) and less than the required rear yard (§23-47) and side yard (§23-461). The amendment seeks to correct open space and floor area calculations and adds a waiver to the perimeter wall height. R3-2 zoning district. PREMISES AFFECTED – 1559 East 29<sup>th</sup> Street, between Avenue P and Kings Highway, Block 7690, Lot 20, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to modify the previously approved plans for an enlargement of an existing single family home; and

WHEREAS, a public hearing was held on this application on February 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2012, and then to decision on April 3, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 29<sup>th</sup> Street, between Avenue P and Kings Highway, within an R3-2 zoning district; and

WHEREAS, on November 23, 2010, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-622, to permit the enlargement of an existing single-family home, which resulted in non-compliances as to floor area ratio (“FAR”), open space ratio, rear yard, and side yards; and

WHEREAS, the applicant now seeks an amendment to correct the calculations related to FAR, open space, lot coverage, and side yard, and to include an additional waiver for the perimeter wall height; and

WHEREAS, specifically, the applicant seeks to correct

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# MINUTES

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the calculations it provided for the prior approval, to reflect: (1) a reduction in the floor area from 2,414 sq. ft. (0.86 FAR) to 2,308 sq. ft. (0.83 FAR); an increase in the open space from 1,490 sq. ft. (53 percent) to 1,540 sq. ft. (55 percent); (3) a decrease in the lot coverage from 1,310 sq. ft. (47 percent) to 1,236 sq. ft. (45 percent); and (4) an increase in the width of the side yard along the northern lot line from 3'-0" to 3'-6"; and

WHEREAS, the applicant notes that all of the requested corrections reduce the degree of non-compliance approved in the original grant; and

WHEREAS, the applicant also requests an amendment to reflect the correct perimeter wall height of 22'-5" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-2 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a streetscape establishing that the adjacent home to the north, 1555 East 29<sup>th</sup> Street, has a perimeter wall height of 22'-5"; and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21'-0"; and

WHEREAS, the applicant represents that no other changes are proposed; and

WHEREAS, accordingly, the Board finds that the requested change is within the scope of the original grant and does not affect the required special permit findings; and

WHEREAS, based upon its review of the record, the Board finds 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, dated November 23, 2010, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the BSA-approved plans; *on condition* that all work and site conditions shall comply with drawings marked "Received February 21, 2012"—(11) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 2,308 sq. ft. (0.83 FAR); a minimum open space of 55 percent; a maximum lot coverage of 45 percent; a maximum perimeter wall height of 22'-5"; a side yard with a minimum width of 3'-6" along the northern lot line; a side yard with a minimum width of 7'-6" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans

THAT all conditions from the prior resolution not specifically waived by the Board shall remain in effect; and

THAT the Department of Buildings must ensure

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 320155880)

Adopted by the Board of Standards and Appeals, April 3, 2012.

**\*The resolution has been amended to reflect the changes in the First condition. Corrected in Bulletin No. 31, Vol. 97, dated August 1, 2012.**

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# BULLETIN

OF THE  
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AND APPEALS

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Volume 97, Nos. 32-33

August 15, 2012

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## DIRECTORY

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**DARA OTTLEY-BROWN**

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**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

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# DOCKET

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New Case Filed Up to August 7, 2012  
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## 211-12-BZ

164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street., Block 585, Lot(s) 39, Borough of **Brooklyn, Community Board: 6**. Application filed to permit proposed reestablishment of a cellar and three-story, two-family residential building in an M1-1 zoning district. M1-1 district.  
-----

## 235-12-BZ

2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north., Block 8839, Lot(s) 33,38, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-242) to permit a one-story building to be used as four(4) Use Grop 6 easting and drinking establishments. C3 zoning district. C3 district.  
-----

## 236-12-BZ

1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street., Block 869, Lot(s) 372, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the extension of an existing medical office and variance of side yard requirement to permit one side yard of 4.97' (8' required) contrary §23-45. R2 zoning district. R2 district.  
-----

## 237-12-BZ

220 West 19th Street, southside West 19th Street, between 7th and 8th Avenues., Block 768, Lot(s) 50, Borough of **Manhattan, Community Board: 04**. Special Permit (§73-36) to permit a physical culture establishment. C6-4A zoning district. C6-2A zoning district. C6-2A district.  
-----

## 238-12-BZ

1713 East 23rd Street, between Quentin Road and Avenue R, Block 6806, Lot(s) 86, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargements of single and two family detached and semi-detached residences. R3-2 zoning district. R3-2 district.  
-----

## 239-12-A

38 Irving Walk, west side of Irving Walk, 45' north of the mapped Breezy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade of the existing non-conforming

private disposal system partially in the bed of the Service Road is contrary to Building Department policy. R4 zoning district R4 district.  
-----

## 240-12-A

217 Oceanside Avenue, north side Oceanside Avenue west of Mapped Beach 201st Street., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system in the bed of the mapped street is contrary to Article 3 of the General City Law. R4 zoning district . R4 district.  
-----

## 241-12-BZ

8-12 Bond Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot(s) 62, Borough of **Manhattan, Community Board: 02**. Variance (§72-21) to permit the construction of a new 32,235.1 SF (4.98FAR) residential building with residential and retail use below the level of the second story contrary to §42-10 and 42-14D(2)(b), respectively. M1-5B zoning district. M1-5B district.  
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## 242-12-BZ

1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street., Block 5517, Lot(s) 85, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the construction of a Use Group 4A House of Worship, contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district. M1-1 district.  
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## 243-12-BZ

236 Richmond Valley Road, southern side of Richmond Valley Road between Page Avenue and Arthur Kill Road., Block 7971, Lot(s) 200, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-36) to permit the legalization of a physical culture establishment. M3-1 zoning district. M3-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**AUGUST 21, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 21, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**302-01-BZ**

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R-8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

**COMMUNITY BOARD #3BX**

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**189-03-BZ**

APPLICANT – Eric Palatnik, P.C., for 830 East 233<sup>rd</sup> Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted Special Permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expired on October 21, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules of Practice and Procedure. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233<sup>rd</sup> Street, southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**APPEALS CALENDAR**

**151-12-A**

APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.

SUBJECT – Application May 9, 2012 – Appeal from a DOB determination which denied owner's request to lift a stop work order and thereby legalize an amateur radio antenna on the roof of the premises (previously legalized by the owner under Application No. 12021381). R8B zoning district.

PREMISES AFFECTED – 231 East 11<sup>th</sup> Street, north side of E. 11<sup>th</sup> Street, 215' west of the intersection of Second Avenue and E. 11<sup>th</sup> Street, Block 467, Lot 46, Borough of

Manhattan.

**COMMUNITY BOARD #3M**

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**207-12-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Christopher Fairbairn, lessee.

SUBJECT – Application July 2, 2012 – The legalization of a reconstruction of a single family not fronting on a legally mapped street contrary to General City Law Section 36 and the proposed upgrade of an existing private disposal system is contrary to the Department of Buildings policy. R4 Zoning district.

PREMISES AFFECTED – 164 Reid Avenue, west of Reid Avenue, south of Janet Lane, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**AUGUST 21, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, August 21, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**5-11-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Dumbo Development, LLC, owner.

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a residential development, contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**157-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1968 2<sup>nd</sup> Avenue Realty LLC., owner.

SUBJECT – Application October 5, 2011 – Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard ZR §33-261 and loading berth ZR §36-683 requirements. C1-5/R8A and R7A zoning districts.

PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101<sup>st</sup> Street, Block 1673, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #11M**

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# CALENDAR

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**71-12-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Archer Avenue Partners, LLC, owner; Neighborhood Housing Services of Jamaica, Inc., lessee.

SUBJECT – Application March 23, 2012 – Variance (§72-21) to allow for a residential building contrary to ZR §115-233 height and setback, ZR §115-51 accessory off street parking, and ZR §115-211/§23-942 floor area ratio.

C6-2 Zoning District/Downtown Jamaica Special District.  
PREMISES AFFECTED – 165-10 Archer Avenue, southeast corner of 165<sup>th</sup> Street and Archer Avenue, Block 10155, Lot 105, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**79-12-BZ**

APPLICANT – Jeri Fogel, for Impala Retail Owner LLC, owner; House of Jai, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*House of Jai*). C1-9 zoning district.

PREMISES AFFECTED – 1456 First Avenue, east side of First Avenue, 50' south of corner of 76<sup>th</sup> Street, Block 1470, Lot 1002, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, AUGUST 7, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

### SPECIAL ORDER CALENDAR

#### 433-61-BZ

APPLICANT – Harold Weinberg, for Shin J. Yoo, owner.  
SUBJECT – Application November 28, 2012 – Extension of  
Term (§11-411) of a variance which permitted a one story  
and mezzanine retail building, contrary to use regulations;  
Waiver of the Rules. R7A zoning district.

PREMISES AFFECTED – 1702-12 East 16<sup>th</sup> Street,  
between Quentin Road and Avenue R. Block 6798, Lot 13,  
Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

##### APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

**ACTION OF THE BOARD** – Application granted on  
condition.

##### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

##### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of the term for a previously granted variance for  
the construction of a one-story commercial building (Use  
Group 6) currently occupied by six stores, which expired on  
July 18, 2011; and

WHEREAS, a public hearing was held on this  
application on March 6, 2012, after due notice by  
publication in *The City Record*, with continued hearings on  
May 8, 2012, June 5, 2012, and July 10 2012, and then to  
decision on August 7, 2012; and

WHEREAS, Community Board 15, Brooklyn,  
recommends approval of this application; and

WHEREAS, the premises and surrounding area had  
site and neighborhood examinations by Chair Srinivasan,  
Commissioner Hinkson, Commissioner Montanez, and  
Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of  
East 16<sup>th</sup> Street, between Quentin Road and Avenue R, within  
an R7A zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the site since July 18, 1961 when, under the subject calendar  
number, the Board granted a variance to permit the  
construction of a one-story and mezzanine retail store building,  
within a residence use district, for a term of 30 years; and

WHEREAS, subsequently, the grant was amended and

the term extended at various times; and

WHEREAS, most recently, on December 11, 2001, the  
Board granted a ten-year extension of term, which expired on  
July 18, 2011; and

WHEREAS, the applicant now seeks an additional ten-  
year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and

WHEREAS, at hearing, the Board questioned whether  
the signage at the site complied with C1 district regulations;  
and

WHEREAS, in response, the applicant submitted a  
signage analysis reflecting that the existing signage is not in  
compliance, but submitted revised plans reflecting  
complying signage on the site; and

WHEREAS, the Board questioned how long it would  
take the applicant to bring the signage into compliance at the  
site; and

WHEREAS, in response, the applicant states that  
because there are six individual tenants at the site, each  
tenant will have to go through the process of bringing their  
signage into compliance separately, which will take  
approximately one year; and

WHEREAS, based upon the above, the Board finds  
that the requested extension of term is appropriate with  
certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*,  
and *amends* the resolution, dated July 18, 1961, so that as  
amended this portion of the resolution shall read: “to extend  
the term for ten years from July 18, 2011, to expire on July  
18, 2021; *on condition* that all use and operations shall  
substantially conform to drawings filed with this application  
marked “Received July 5, 2012”-(2) sheets; and *on further  
condition*:

THAT the term of the grant will expire on July 18, 2021;

THAT all signage at the site will comply with C1 district  
regulations;

THAT the above condition will appear on the certificate  
of occupancy;

THAT a new certificate of occupancy or temporary  
certificate of occupancy will be obtained by August 7, 2013;

THAT all conditions from prior resolutions not  
specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure  
compliance with all other applicable provisions of the  
Zoning Resolution, the Administrative Code and any other  
relevant laws under its jurisdiction irrespective of plan(s)  
and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 247/61)

Adopted by the Board of Standards and Appeals August  
7, 2012.



# MINUTES

## 337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application April 26, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted an automotive repair establishment (UG 16B) and a two-story mixed-use building with retail (UG 6) and residential (UG 2), which will expire on June 2, 2012. C1-3/R5D zoning district.

PREMISES AFFECTED – 1415-17 East 92<sup>nd</sup> Street, northeast corner of the intersection formed by East 92<sup>nd</sup> Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Bennett.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for the continued operation of a one-story automotive repair shop (Use Group 16); and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, and then to decision on August 7, 2012; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application, with the condition that the applicant comply with the conditions listed in the Board’s prior grant; and

WHEREAS, the site is located on the northeast corner of the intersection at 92<sup>nd</sup> Street and Avenue L, within a C1-3 (R5D) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 1950 when, under BSA Cal. No. 337-50-BZ, the Board granted a variance to permit the reconstruction of an existing gasoline service station and the construction of a lubritorium for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, on June 2, 1992, under the subject calendar number, the Board granted a special permit to permit the re-establishment of an expired variance for an automotive service station (Use Group 16) and the legalization of a change of use to an automotive repair establishment (Use Group 16) for a term of ten years, to expire on June 2, 2002; and

WHEREAS, most recently, on April 21, 2009, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on June 2, 2012, and a six-month extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant now seeks an additional ten-year extension of the term; and

WHEREAS, at hearing, the Board directed the applicant to correct its signage analysis to include the banners that are hung on the façade of the building that fronts East 92<sup>nd</sup> Street in its signage analysis; and

WHEREAS, in response, the applicant submitted a revised signage analysis including the banners on the East 92<sup>nd</sup> Street frontage, which reflects that the signage complies with C1 district regulations; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 2, 1992, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 2, 2012, to expire on June 2, 2022; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked ‘Received April 26, 2012’-(4) sheets and ‘July 23, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on June 2, 2022;

THAT there will be no parking on the sidewalk;

THAT the site will be maintained free of debris and graffiti;

THAT all automobile repairs will be conducted inside the building and there will be no automobile body repairs at the premises;

THAT all lighting will be directed downward and away from adjacent residential uses;

THAT the hours of operation for the automotive repair establishment will be Monday through Friday from 8:00 a.m. to 6:00 p.m., and Saturday from 8:00 a.m. to 2:00 p.m. to minimize noise and vehicular impacts on the adjacent residential uses;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 1017/49)

Adopted by the Board of Standards and Appeals, August 7, 2012.

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## 37-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Vornado Forest Plaza, LLC, owner; 2040 Forest Avenue Fitness Group LLC, lessee.

SUBJECT – Application February 14, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a Physical Culture Establishment (*Planet Fitness*) which expired on November 9, 2003; Waiver of the Rules. C8-1 zoning district.

# MINUTES

PREMISES AFFECTED – 2040 Forest Avenue, south side of Forest Avenue between Heaney Avenue and Van Name Avenue, Block 1696, Lot 8, Borough of Staten Island.

## COMMUNITY BOARD #1SI

### APPEARANCES –

For Applicant: Elizabeth Bennett.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expires on November 9, 2013, and an amendment to reflect a change in the ownership and operation of the PCE; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with a continued hearings on July 10, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the PCE is located on an irregularly shaped lot on the south side of Forest Avenue, between Heaney Avenue and Van Name Avenue, within a C8-1 zoning district; and

WHEREAS, the site is occupied by two one-story shopping center buildings; and

WHEREAS, the PCE occupies approximately 24,649 sq. ft. of floor area located in the southeast corner of the shopping center; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 1993 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on November 9, 2003; and

WHEREAS, on October 25, 2005, the Board granted a ten-year extension of the term, which expires on November 9, 2013; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as Planet Fitness; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, at hearing, the Board directed the applicant

to remove the graffiti from the exterior of the building and the retaining wall located along rear of the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the building’s exterior wall and the retaining wall have been repainted to remove the graffiti; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previous grant are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 9, 1993, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 9, 2013, to expire on November 9, 2023, and to permit the noted change in the ownership and operation of the PCE, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received February 14, 2012’-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 9, 2023;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 500751876)

Adopted by the Board of Standards and Appeals, August 7, 2012.

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## 112-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Bnai Shloima Zalman by Eugene Langsam, owners.

SUBJECT – Application October 12, 2011 – Amendment for the increase in floor area and Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a two story and cellar (UG4) synagogue (*Bnai Shloima Zalman*) which expired on September 11, 2011. R-2 zoning district.

PREMISES AFFECTED – 1089-1093 East 21<sup>st</sup> Street, between Avenue I and Avenue J, Block 7585, Lot 21 & 22, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### APPEARANCES –

For Applicant: Lyra J. Altman.

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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, an extension of time to complete construction and obtain a certificate of occupancy for a previously approved variance, and an amendment to permit certain modifications to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 10, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the applicant is brought on behalf of Congregation Bnai Schloima Zalman, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the east side of East 21<sup>st</sup> Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 5,500 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1994 when, under BSA Cal. No. 160-93-BZ, the Board granted a variance to permit the legalization of an enlargement to an existing synagogue at the site; and

WHEREAS, on September 11, 2007, under the subject calendar number, the Board granted a variance to permit the demolition of the existing synagogue and the construction of a new two-story and cellar synagogue building, contrary to floor area, FAR, lot coverage, front yard, side yards, rear yard, wall height, and parking requirements; and

WHEREAS, on September 9, 2009, the Board issued a letter of substantial compliance approving certain modifications to the proposal to reflect an enlargement of the existing building rather than the construction of a new building; and

WHEREAS, substantial construction was to be completed by September 11, 2011 in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing concerns; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant also seeks an amendment to permit certain modifications to the previously-approved plans in order to better meet the programmatic needs of the Synagogue; and

WHEREAS, specifically, the applicant proposes: (1) an increase in the proposed floor area of the building from 7,236

sq. ft. (1.32 FAR) to 7,316 sq. ft. 1.33 FAR); (2) modifications to the front porch including the addition of two ramps; (3) shifting of the location of the side stairs; (4) elimination of a chimney; (5) modification of the exterior appearance and the interior layout including the addition of a refuse room in the cellar; (6) extension of the foundation below the porch for the the addition of a men’s mikvah; (7) extension of the existing chimney; (8) addition of an elevator and elevator overrun; (9) revision of the stair bulkhead layout; and (10) an increase of the perimeter wall height; and

WHEREAS, the applicant states that the floor area increase for the building is due to the addition of a new 6’-0” by 7’-0” area on the north side of the first and second floors to be used to store the moveable partitions, which will be used in such a way that the partitions will not be visible from the prayer area when they are not in use; and

WHEREAS, in response to concerns raised by the Board during the hearing process, the applicant submitted revised plans reflecting a roof height of 23’-0” for the rear 30’-0” of the property, an increase in the height of the parapet wall from 2’-9” to 3’-6” to comply with the Building Code, and the removal of the covered porch in the front yard; and

WHEREAS, based upon the above, the Board finds that the requested extension of time and amendment to the plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 11, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction and obtain a certificate of occupancy, to expire on August 7, 2016, and to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received August 1, 2012’- (11) sheets and *on further condition*:

THAT substantial construction shall be completed and a new certificate of occupancy obtained by August 7, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 320021301)

Adopted by the Board of Standards and Appeals, August 7, 2012.

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## 718-56-BZ

APPLICANT – Walter T. Gorman, P.E., for 741 Forest Service Corp., owner; Avi Diner, lessee.

SUBJECT – Application April 10, 2012 – Extension of Term (§11-411) of a previously approved variance

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permitting the operation of an automotive service station (UG 16B) with accessory uses which will expire on July 2, 2012. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Qasim Murtaza.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for decision, hearing closed.

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## 548-69-BZ

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107<sup>th</sup> Street, Block 1694, Lot 1, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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## 271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for continued hearing.

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## 69-91-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The 61 West 62<sup>nd</sup> Street Condominium, owner; TSI Lincoln LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on November 26, 2012; an Amendment for a decrease in floor area; Waiver of the Rules. C4-7 (L) zoning district

PREMISES AFFECTED – 49-61 West 62<sup>nd</sup> Street, northeasterly corner of West 62<sup>nd</sup> Street and Columbus Avenue, Block 1115, Lot 7502, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for decision, hearing closed.

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## 93-97-BZ

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor (5,902 sf) from accessory parking spaces to UG 6 office use. C4-3 zoning district Amendment to a previously granted Variance (§72-21) to permit the change in use of a portion of the existing second floor (5902sf) which is currently occupied by 13 off street accessory parking spaces to UG 6 office use. C4-3 zoning district.

PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for postponed hearing.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C., for Bway-129 St. Gasoline Corp., owner.

SUBJECT – Application December 5, 2011 – Extension of Term (§11-411) of a previously granted variance which permitted the construction and maintenance of an automotive service station (UG 16B) with accessory uses which expired on June 3, 2010; Waiver of the Rules. R6/C1-2 zoning district

PREMISES AFFECTED – 141-54 Northern Boulevard, southwest corner of Parsons Boulevard, Block 5012, Lot 45, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

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**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for continued hearing.

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**98-06-BZ/284-06-A**

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A Zoning District.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Eric Palatnik and Rabbi Goodman.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for continued hearing.

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**128-10-BZ**

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Lot 31, Borough of Queens.

**COMMUNITY BOARD #8Q**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

**24-12-A & 147-12-A**

APPLICANT – Richard G. Leland, Esq./Fried Frank, for 12<sup>th</sup> Avenue Realty Holding Corp., owner; Mizey Realty Co., Inc., lessee.

SUBJECT – Application February 2, 2012 and May 8, 2012 – Appeal challenging the Department of Buildings’ determination that outdoor accessory signs and structures are not a legal non-conforming use pursuant to §52-00. M1-2 zoning district.

PREMISES AFFECTED – 2368 12<sup>th</sup> Avenue, bounded by Henry Hudson Parkway, West 134<sup>th</sup> Street, 12<sup>th</sup> Avenue and 135<sup>th</sup> Street, Block 2005, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #9M**

APPEARANCES –

For Applicant: Richard G. Leland.

**ACTION OF THE BOARD** – Appeal denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Borough Commissioner of the Department of Buildings (“DOB”), dated January 3, 2012, denying Application Nos. 1005504 and 1005605 from registration for signs at the subject site (the “Final Determinations”), which read, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on June 12, 2012, after due notice by publication in *The City Record*, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the block bounded by the Henry Hudson Parkway to the west, West 134<sup>th</sup> Street to the south, 12<sup>th</sup> Avenue to the east, and West 135<sup>th</sup> Street to the north, in an M1-2 zoning district within the Special Manhattanville Mixed Use District; and

WHEREAS, the site has a lot area of approximately 15,670 sq. ft. and is occupied by a one-story building with a floor area of 3,000 sq. ft. and an illuminated double-faced ground sign with each face measuring 20 feet by 60 feet (1,200 sq. ft.) beginning at a height of approximately 85 feet

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above grade and rising to a height of approximately 105 feet above grade (the "Signs"); one sign faces to the north and one sign faces to the south; and

WHEREAS, the Signs are located within 200 feet of the Henry Hudson Parkway, a designated arterial highway pursuant to Zoning Resolution Appendix H, and within 200 feet of Riverbank State Park, a "public park" pursuant to ZR § 12-10; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the Appellant's registration of the signs based on DOB's determination that the Signs are not permitted to be used as non-conforming accessory business signs; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Signs were constructed in 1999 pursuant to three permits that were approved by DOB on February 19, 1999 (collectively, the "Permits"): (1) Permit 102051823-01-AL, which approved the sign structure; (2) Permit 102051805-01-SG, which approved an "illuminated accessory business sign"; and (3) Permit 102051814-01-AL, which also approved an "illuminated accessory business sign"; and

WHEREAS, the Appellant represents that beginning on April 1, 1999, the Signs were put into use to display copy in connection with the use of the building on the site for storage and staging of display fixtures used by Tommy Hilfiger U.S.A., Inc. ("Tommy Hilfiger") in its product showrooms and in department stores carrying Tommy Hilfiger licensed clothing and products; and

WHEREAS, the Appellant asserts that the Signs were used exclusively and continuously to display copy in connection with Tommy Hilfiger's use of the site through the end of May 2008, and the Tommy Hilfiger copy was removed from the Signs between May 31 and June 5, 2008; and

WHEREAS, the Appellant represents that Wodka, LLC ("Wodka") has leased the subject site beginning May 1, 2010 through the present, using the subject building for the storage of promotional materials and staging of Wodka promotional activities, and using the Signs for display of copy connected with its use of the site; and

WHEREAS, on or about September 1, 2009, pursuant to the 2008 Building Code and Chapter 49 of Title 1 of the Rules of the City of New York ("RCNY"), the Appellant filed to register the Signs as non-conforming accessory signs; and

WHEREAS, by letter dated June 2, 2011, DOB informed the Appellant that its filing failed to establish that the accessory sign was: (1) legally created before February 27, 2001 (the effective date of the applicable amendment to the Zoning Resolution); and (2) not used to display advertising; and

WHEREAS, by letter dated August 11, 2011, the Appellant submitted additional photographs and contracts regarding the Signs; and

WHEREAS, DOB determined that the additional materials failed to establish the existence of a non-conforming accessory sign eligible for registration, and issued the Final Determinations on January 3, 2012; and

## RELEVANT STATUTORY PROVISIONS

### *ZR § 12-10 Definitions*

Accessory use, or accessory (2/2/11)

An "accessory use":

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either 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#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

\* \* \*

### *Sign, advertising (4/8/98)*

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

\* \* \*

### *ZR § 42-55 Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways (2/27/01)*

...(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed;

\* \* \*

### *ZR § 52-11 – Continuation of Non-Conforming Uses/General Provisions (12/15/61)*

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

\* \* \*

### *ZR § 52-61 – Discontinuance/General Provisions*

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(10/7/76)

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . .

\* \* \*

#### Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more. . .

\* \* \*

#### RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

... (d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

#### RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming. . .

\* \* \*

#### RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

- (a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or

- (b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot.

\* \* \*

#### THE APPELLANT’S POSITION

a. Lawful Establishment and Continuous Use

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) the Signs were lawfully established in 1999 as an accessory sign as defined by ZR § 12-10 and may therefore be maintained as a legal non-conforming accessory sign pursuant to ZR § 52-11, and (2) the Signs have operated as accessory signs with no discontinuance of two years or more since their lawful establishment; and

WHEREAS, in support of the lawful establishment of the Signs in 1999, the Appellant relies on (1) the 1999 Permits, (2) a 1999 media contract between the Appellant and Tommy Hilfiger for the use of the Signs, dated December 24, 1998, which commenced on April 1, 1999 and expired on March 31, 2002 (the “1999 Media Contract”), (3) a license agreement between the Appellant and Tommy Hilfiger for the use of the site for storage and/or warehousing of Tommy Hilfiger’s products, which commenced on January 4, 1999 and expired at the end of the 1999 Media Contract; and (4) an affidavit from Peter Connolly, the President of Marketing for Tommy Hilfiger from 1998 until September 2006, stating that from January 4, 1999 through his departure from the company in September 2006, the subject building was used by Tommy Hilfiger for “the storage, staging and repair of...display fixtures as well as administrative functions related to such use...” (the “Tommy Hilfiger Affidavit”); and

WHEREAS, in support of the continuous use of the Signs since 1999, the Appellant submitted a timeline with supporting evidence consisting of media contracts, license agreements, lease agreements, affidavits, and photographs, for each year from 1999 through 2012; and

WHEREAS, the Appellant asserts that at the time the Signs were erected in 1999, the Zoning Resolution permitted accessory signs in the subject M1-2 zoning district with no restriction as to size, however, on February 27, 2001 new zoning regulations were enacted under ZR § 42-55 imposing a 500 sq. ft. area limitation on signs within 200 feet and within view of arterial highways and public parks; and

WHEREAS, the Appellant contends that following the enactment of ZR § 42-55 on February 27, 2001, the Signs – measuring 1,200 sq. ft. each – became existing non-conforming uses as defined by the Zoning Resolution; and

WHEREAS, the Appellant asserts that it has provided

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to DOB a preponderance of evidence including DOB permits, advertising contracts, licenses for use of the at-grade portions of the site, and photographs demonstrating that the Signs were lawfully established and continually used from 1999 to the present, without any discontinuance of use of the Signs for two years or more; and

b. The Accessory Sign v. Advertising Sign Analysis

WHEREAS, the Appellant asserts that it has established by a preponderance of the evidence that, when established, the Signs were accessory signs as defined by the Zoning Resolution; and

WHEREAS, the Appellant relies on the definitions for “advertising sign” and “accessory use” set forth at ZR § 12-10; and

WHEREAS, as noted above, ZR § 12-10 defines an accessory use as a use: (1) conducted on the same zoning lot as the principal use to which it is related; (2) which is clearly incidental to, and customarily found in connection with, such principal use; and (3) which is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use; and

WHEREAS, the Appellant asserts that the Signs meet each of the criteria of the ZR § 12-10 definition of accessory use; and

WHEREAS, specifically, the Appellant contends that the Signs meet the ZR § 12-10(a) definition of “accessory use” in that the Signs were established in 1999 by Tommy Hilfiger on the same zoning lot (comprised of tax lot 32) as the principal use of the building on the site for storage, staging, and repair of display fixtures by Tommy Hilfiger, and the Signs remain on the same zoning lot as the use of the entirety of the building on the zoning lot by Wodka; and

WHEREAS, the Appellant contends that the Signs meet the ZR § 12-10(b) definition of “accessory use” in that the display of Tommy Hilfiger copy and Wodka copy on the Signs has clearly been incidental to the use by Tommy Hilfiger and Wodka of the building on the site, and a company using a property “customarily” posts signs displaying the company name “in connection with” its use of such property; and

WHEREAS, finally, the Appellant contends that the Signs meet the ZR § 12-10(c) definition of “accessory use” in that the Signs were operated and maintained on the same zoning lot for display of Tommy Hilfiger copy and Wodka copy, which display of copy has been substantially for the benefit of the occupants of the principal use of the at-grade portions of the site; and

WHEREAS, the Appellant notes that ZR § 12-10 states that an “advertising sign” is a sign which is “not #accessory# to a #use# located on the #zoning lot#,” and therefore the Signs are specifically excluded from the definition of “advertising sign” since they were established as accessory to Tommy Hilfiger’s use of the same zoning lot; and

WHEREAS, accordingly, the Appellant contends that it satisfies the plain meaning of the Zoning Resolution

definition of accessory use, and cites to Gruson v. Dep’t of City Planning, 2008 N.Y. Slip Op 32791U (Sup. Ct., N.Y. Cnty October 3, 2008) and Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 (1997) for the principle that, in interpreting statutes such as the Zoning Resolution, the plain meaning of words should be applied when the statutory language is clear and unambiguous; and

WHEREAS, the Appellant further contends that in rejecting the registration of the Signs, DOB has impermissibly construed ambiguity in the meaning of the term “accessory use” against the Appellant, and any ambiguity in the Zoning Resolution must be determined in favor of the property owner; and

WHEREAS, specifically, the Appellant asserts that even if the meaning of “principal use” in the definition of “accessory use” is ambiguous, the New York State Court of Appeals in Toys “R” Us v. Silva, 89 N.Y.2d 411, 421 (1996) found that “zoning restrictions, being in derogation of common-law property rights, should be strictly construed and any ambiguity resolved in favor of the property owner”; and

WHEREAS, the Appellant also discusses three Board cases cited by DOB as evidence of the Board’s experience in reviewing DOB determinations regarding accessory uses (BSA Cal. Nos. 14-11-A, 45-96-A, and 194-94-A); and

WHEREAS, specifically, the Appellant argues that BSA Cal. No. 14-11-A does not offer any precedential value as to whether the Signs may be considered an accessory use because that case concerned permitted floor space in the cellar of a residential building; and

WHEREAS, the Appellant argues that BSA Cal. No. 45-96-A, which concerned a large cigarette sign in connection with a small convenience store, can be distinguished from the instant case because cigarettes were among the many types of products sold from the principal use which was the convenience store itself, while at the subject site the Signs have been leased and operated by and for the benefit of the sole occupant and use of the building on the site; and

WHEREAS, the Appellant contends that the subject case is more analogous to BSA Cal. No. 194-94-A, where the Board found (and the Court of Appeals affirmed in New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998)) that a 480-ft. (approximately 45-story) radio tower for a 50,000 watt radio station constituted an accessory use notwithstanding its large size and the fact that broadcasting from the station would go well beyond the boundaries of the university to which the radio station and its proposed tower were accessory; and

WHEREAS, the Appellant argues that, similar to BSA Cal. No. 194-94-A, the Board should not consider the size of the Signs in relation to the size of the principal use as determinative of whether they may be considered accessory to the use of the building; and

## DOB’S POSITION

WHEREAS, DOB makes the following primary points to support its position that the Signs do not qualify as non-



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conforming accessory signs: (1) the Signs were never lawfully established as accessory signs because the warehouse at the site was not a legitimate principal use; and (2) the Signs are currently used as unlawful advertising signs for the display of Wodka copy; and

WHEREAS, DOB asserts that there was never a legitimate principal use at the subject lot that would have permitted the use of the Signs by Tommy Hilfiger as an accessory use; and

WHEREAS, DOB notes that, according to Certificate of Occupancy No. 102657947, dated January 31, 2003, the principal use of the zoning lot is “warehouse with accessory commercial office;” and

WHEREAS, DOB relies on the language in RCNY § 49-43 which establishes a rebuttable presumption that “signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot” and that signs “larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot” are advertising signs for purposes of compliance with the Zoning Resolution; and

WHEREAS, DOB also relies on Department Operations Policy and Procedure Notice 10/99 (“OPPN 10/99”), issued prior to the promulgation of Rule 49 but remaining in effect, which sets forth the requirements for obtaining an accessory sign permit; and

WHEREAS, DOB notes that OPPN 10/99 parallels the rebuttable presumption set forth in RCNY § 49-43, that signs connected to a principal use whose activity on the zoning lot consists primarily of storage or a warehouse, and signs larger than 300 square feet which do not direct attention to the zoning lot are deemed to be advertising signs; and

WHEREAS, DOB further notes that OPPN 10/99 also sets forth what evidence is required in a permit application to demonstrate that the principal use can support the sign as an accessory use, which includes: (1) the name of the business owner, (2) a description of the business operation signed by the owner, (3) evidence that the use is permitted on the zoning lot, (4) a lease or deed demonstrating the amount of space on the zoning lot that will be used by the principal use and how the space will be used, (5) a description of the proposed sign and copy, (6) evidence that the sign will be owned and paid for by the owner of the principal use, and (7) a statement of the size and type of sign to be installed; and

WHEREAS, OPPN 10/99 further provides that if the plan examiner cannot determine based on the evidence provided that the proposed sign is a legitimate accessory sign, the application may be referred to the borough commissioner for further review, in which case the borough commissioner may request additional evidence to determine:

- (1) that the use identified as the principal use is in fact a bona fide business (e.g., a business plan, purchase orders and receipts for merchandise or service equipment, copies of advertisement

and/or phone listings identifying the business at the zoning lot, sales or other accounting/financial records (if the business is an existing business), request for a site inspection to show planned or existing business operations, etc.) and/or

- (2) that the proposed sign is accessory to the identified principal use (e.g., evidence that the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign); and

WHEREAS, DOB states that OPPN 10/99 was published to prevent sham warehouses with “accessory signs” which in fact were nothing more than an empty building with an advertising sign, and OPPN 10/99 represents the interpretation and implementation of two well-established Zoning Resolution requirements: (1) that an accessory use be “clearly incidental to” and “customarily found in connection with” the principal use; and (2) that advertising signs be placed a certain distance from the City’s arterial highways; and

WHEREAS, DOB asserts that a sign (use) whose revenue far exceeds that which is generated by the principal use of the zoning lot cannot be considered a “clearly incidental” use, and while it is customary for a business to have accessory signage, it is not customary for the sign revenue to dwarf the business revenue such that the business would scarcely exist without the sign; and

WHEREAS, DOB further asserts that where, as here, the surface area of the sign copy is four-fifths the square footage of the warehouse (the Signs measure 1,200 sq. ft. each, for a total of 2,400 sq. ft., while the subject warehouse building is approximately 3,000 sq. ft.), the sign cannot reasonably be considered “clearly incidental to” the warehouse; and

WHEREAS, DOB argues that the Appellant’s reliance on DOB permits as evidence of the establishment of non-conforming accessory signs is misplaced, noting that the 1999 Permits were not signed off until January 22, 2003 and were filed under professional certification and pursuant to Department Directive 14/1975, which means that the job applicant certified to DOB at the time of filing and at the time of sign-off that the permit applications complied with all applicable laws, rules, and regulations; and

WHEREAS, DOB contends that, despite the sign-off, a review of the job folders reflects that the items required by OPPN 10/99 to establish a legitimate principal use are not included; and

WHEREAS, DOB asserts that the only evidence provided regarding the warehouse operations from 1999 through 2008 is the Tommy Hilfiger Affidavit, which states that the warehouse was “used by Tommy Hilfiger for the storage, staging, and repair of...display fixtures as well as for administrative functions related to such use...”; however, there is nothing in the record that corroborates this statement; and

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WHEREAS, specifically, DOB argues that there is no objective, independently verifiable evidence of warehouse operations, such as a business plan, purchase orders or receipts for merchandise or service equipment, copies of advertisements or phone listings, or financial records of any kind; and

WHEREAS, further, DOB notes that the Signs did not direct the attention of vehicular and pedestrian traffic to the Tommy Hilfiger business on the zoning lot; and

WHEREAS, DOB asserts that one uncorroborated statement cannot be considered sufficient evidence of almost ten years of warehouse operations; accordingly, the legitimacy of the principal use has not been demonstrated; and

WHEREAS, DOB further asserts that absent a demonstrated, legitimate principal use at the subject lot, the Tommy Hilfiger signs could not have been accessory signs; rather, they were by definition advertising signs; and

WHEREAS, DOB states that, therefore, the Signs could not have become non-conforming accessory signs when the Zoning Resolution was amended, effective February 27, 2001, to restrict the height and surface area of accessory signs near arterial highways, and since the Signs were advertising signs near an arterial highway and a public park, the Signs were maintained in violation of ZR § 42-55; and

WHEREAS, DOB asserts that when Wodka took over the use of the site, the use of the Signs as unlawful advertising signs continued; and

WHEREAS, DOB argues that the Appellant has similarly failed to submit evidence to DOB that would rebut the presumption set forth in RCNY § 49-43 and OPPN 10/99 that the Wodka signs – which are located on a zoning lot whose principal use consists primarily of a warehouse and which is greater than 200 sq. ft. and clearly not used to direct the attention of vehicular and pedestrian traffic to the business of the zoning lot – are advertising signs rather than accessory signs; and

WHEREAS, DOB states that it inspected the warehouse on or about February 3, 2012, and observed minimal warehouse activities and a Wodka sign that did not indicate any connection to the Wodka warehouse; and

WHEREAS, accordingly, DOB concludes that the use of the Signs by Wodka is also deemed to be as advertising signs in violation of ZR § 42-55, and that the registration of the Signs as non-conforming accessory signs was properly rejected; and

WHEREAS, in response to the Appellant's argument that the plain meaning of the Zoning Resolution supports its continued use of the Signs as accessory to the warehouse on the subject lot, DOB asserts that the plain meaning of the text actually supports DOB's determination that the Appellant has failed to demonstrate the existence of a principal use for which an accessory sign may be erected and maintained; and

WHEREAS, specifically, DOB argues that the ZR § 12-10 definition of "accessory use" divides uses into two categories – principal uses and accessory uses – with

accessory uses being subordinate and dependent upon principal uses; therefore, before determining whether a particular use may be considered "accessory" per ZR § 12-10, the principal use of the lot must be identified; and

WHEREAS, DOB contends that rather than establishing that the principal use of the subject lot is a warehouse, the evidence submitted by the Appellant, including the Tommy Hilfiger leases and media contracts, favors the conclusion that the principal use of the lot is the advertising sign, and the warehouse exists for the sole purpose of claiming that the advertising sign is accessory to it; and

WHEREAS, DOB further contends that, even assuming the warehouse is considered a principal use, the Signs do not satisfy the remainder of the criteria for an "accessory use," as they are not "clearly incidental to and customarily found in connection with the principal use of the lot;" and

WHEREAS, specifically, DOB states that the combined surface area of the Signs at 2,400 sq. ft. is almost as large as the floor area of the one-story warehouse (3,000 sq. ft.), and the evidence of the operations at the site (media contracts, license agreements, and photographs) relate predominantly to the Signs rather than the warehouse; and

WHEREAS, DOB also cites to New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413, 420 (1998), where the Court of Appeals observed that whether a proposed use is accessory "depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question;" and

WHEREAS, DOB argues that the analysis espoused by the Court of Appeals favors DOB's determination, as the subject lot's value derives substantially from its proximity to the Henry Hudson Parkway and 12<sup>th</sup> Avenue, and while the site could reasonably be used for a warehouse use, the evidence suggests that the use of the Signs is too significant to be accessory to the warehouse operation; and

WHEREAS, as to the Appellant's argument that if there is ambiguity regarding the meaning of "principal use" such ambiguity must be resolved in favor of the property owner, DOB asserts that the Appellant is not requesting the Board to resolve an ambiguity in the meaning of the term; rather, the Appellant is requesting the Board to consider a tiny warehouse with absolutely no proof of active operations to be a "principal use," which amounts to giving the term no effect whatsoever, contrary to the fundamental principles of statutory interpretation; and

WHEREAS, DOB notes that the Board has reviewed DOB determinations regarding accessory uses in the past (citing BSA Cal. Nos. 14-11-A, 45-96-A, and 194-94-A), and asserts that the subject case does not come close to satisfying the criteria for accessory use; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the Signs are unlawful advertising signs which were never established as accessory signs pursuant to the ZR § 12-10

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definition of accessory use; and

WHEREAS, the Board finds that the Signs do not meet the criteria of “accessory use” because the warehouse at the site does not qualify as a legitimate principal use and the Signs are not “clearly incidental to” the purported principal use of the site as a warehouse; and

WHEREAS, the Board agrees with DOB that in order to determine whether a use satisfies the ZR § 12-10 definition of “accessory use,” the principal use, upon which the accessory use depends, must first be identified; and

WHEREAS, the Board finds that DOB appropriately relied upon RCNY § 49-43 and OPPN 10/99 for guidance in determining whether the purported principal use at the site was legitimate; and

WHEREAS, the Board notes that RCNY § 49-43 and OPPN 10/99 reflect the public policy goal of ensuring that otherwise unlawful advertising signs or billboards cannot circumvent the requirements of the Zoning Resolution by designating a “sham” warehouse or storage facility as a principal use solely in an attempt to justify the actual principal use of the site as an advertising sign; and

WHEREAS, the Board agrees with DOB that RCNY § 49-43 and OPPN 10/99 establish a rebuttable presumption that the Signs are advertising signs because they (1) are connected to a principal use whose activity on the zoning lot consists primarily of storage or a warehouse, and (2) are larger than 300 sq. ft. and do not direct attention to the zoning lot; and

WHEREAS, the Board finds that the Appellant has failed to submit evidence reflecting that the “revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention,” and therefore has not met the criteria in RCNY § 49-43 for overcoming the presumption that the Signs are advertising signs; and

WHEREAS, similarly, the Board finds that the Appellant has failed to submit sufficient evidence pursuant to OPPN 10/99 to establish that the claimed principal use is a “bona fide business” or that “the actual or anticipated revenue generated by the business or the expense of operating the business on the zoning lot at least equals or exceeds the cost of purchasing or leasing and maintaining the sign;” and

WHEREAS, specifically, the Board agrees with DOB that the leases and media contracts submitted by the Appellant reflect that the revenue generated from the Signs far exceeds the revenue generated by the warehouse or storage facility use on the site, and that all of the evidence provided indicates that the use of the building on the site is subservient to the Signs; and

WHEREAS, the Board further agrees with DOB that the only evidence submitted by the Appellant regarding the warehouse operations from 1999 through 2008 is the Tommy Hilfiger Affidavit, which provides a generic description of the use of the site for “storage, staging, and repair of...display fixtures as well as for administrative functions related to such use,” and which, absent the submission of objective, independently verifiable evidence

of warehouse operations to corroborate the affidavit, as required by OPPN 10/99, the Board finds insufficient to establish a legitimate principal use on the site; and

WHEREAS, as to the current use of the site, the Board finds that, based on its site visits and the photographs submitted by the Appellant and DOB, Wodka’s use of the warehouse building is not indicative of a legitimate principal use, and there is nothing on the Signs that directs attention to the building on the site; and

WHEREAS, specifically, the Board notes that the building currently consists largely of empty space, with the occupied portions used for the storage of a small amount of “promotional material,” which the Board finds cannot support the Appellant’s contention that this is a principal use to which the two 1,200 sq. ft. signs are accessory; and

WHEREAS, the Board further notes that a large, deteriorating Tommy Hilfiger sign remains on the exterior of the subject building despite the fact that Wodka has operated the site exclusively since 2010, which further indicates that the only purpose for the subject building is to justify the Appellant’s claim that the Signs qualify as accessory rather than advertising signs; and

WHEREAS, the Board agrees with DOB that, since the Signs were never established as accessory signs, they could not have become non-conforming accessory signs when ZR § 42-55 was modified on February 27, 2001 to restrict the height and surface area of accessory signs near arterial highways; accordingly, the Appellant’s reliance on ZR § 42-55 and the provisions for the continuance of non-conforming uses is misplaced; and

WHEREAS, the Board disagrees with the Appellant’s contention that the Signs satisfy the plain meaning of the ZR § 12-10 definition of “accessory use,” as the text requires that such use be accessory to a principal use, and the Appellant has not established that the purported principal use on the site is legitimate; and

WHEREAS, the Board finds that, even if the principal use identified on the site were legitimate, the Appellant still would not satisfy the plain meaning of “accessory use,” as the relationship between the Signs and the warehouse is such that the Signs cannot be considered “clearly incidental to” the warehouse; and

WHEREAS, the Board further finds that the Signs, during their operation by both Tommy Hilfiger and Wodka, meet the ZR § 12-10 definition of “advertising signs” in that they “direct[] attention to a business...conducted, sold, or offered elsewhere than upon the same zoning lot...” and

WHEREAS, specifically, the Board finds that the Signs do not provide any information which would direct attention to the purported principal use on the subject zoning lot; rather, the Signs serve to advertise the business conducted elsewhere; and

WHEREAS, the Board finds the Appellant’s argument that the Signs are explicitly excluded from the definition of “advertising sign” because the definition states that an advertising sign is a sign which is “not #accessory# to a #use# located on the #zoning lot#” to be misguided, as the essence of the subject appeal concerns whether or not the

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Signs qualify as “accessory,” and since the Board has determined that they are not “accessory” signs, they are clearly not excluded from the definition of an “advertising sign;” and

WHEREAS, the Board disagrees with the Appellant’s assertion that DOB has injected ambiguity into the term “principal use,” and finds that DOB has applied a rational interpretation to the term, pursuant to the guidance provided by RCNY § 49-43 and OPPN 10/99, while the Appellant would have the Board interpret the term in such a way that merely claiming a use as a “principal use” would be sufficient to establish it as such, despite the lack of any evidence whatsoever regarding the actual activity on the site or the relationship between the purported “principal use” and “accessory use;” and

WHEREAS, as to the Appellant’s analysis of the prior Board cases cited by DOB, the Board finds that DOB’s purpose for citing the cases was merely as evidence that the Board has previously engaged in the analysis regarding what constitutes an accessory use, and DOB did not claim that the facts in any of the cited cases were analogous to the facts in the subject case or that they offered any precedential value; and

WHEREAS, accordingly, the Appellant’s ability to distinguish the facts of the cases under BSA Cal. Nos. 14-11-A and 45-96-A is not relevant to the Board’s analysis of the current case; and

WHEREAS, the Board is not persuaded by the Appellant’s assertion that the subject case is analogous to BSA Cal. No 194-94-A, where the Board determined that a 50,000 watt radio tower with a height of 480 feet on the Fordham University campus qualified as an “accessory use;” and

WHEREAS, specifically, the Board notes that unlike the subject site, there was no question in the Fordham University case that the university was a legitimate principal use, and in its decision the Board noted that the university submitted evidence demonstrating that the radio station and the radio tower were subordinate to the functions of the university as a whole, that it is commonplace for universities to own and operate radio stations as part of their educational mission, and that many universities had university-affiliated public radio stations with signal strengths of 50,000 watts or more; and

WHEREAS, as to the Appellant’s argument that, similar to the radio tower in the Fordham University case, the Board should not consider the size of the Signs in relation to the principal use to be determinative of whether they can be considered an “accessory use,” the Board finds the Appellant’s argument misguided in that the Board’s decision did not directly address that issue; and

WHEREAS further, the Board does not consider the fact that the combined surface area of the Signs (2,400 sq. ft.) is nearly as large as the floor area of the building (3,000 sq. ft.) to be dispositive of whether or not the Signs are an accessory use; however, the Board does find that the size of the Signs in relation to the size of the warehouse reinforces the additional evidence in the record which reflects that the

Signs are not “clearly incidental to” the warehouse building; and

WHEREAS, as to the question of continuity, the Board finds that since the threshold matter of the classification of the Signs is not met, it is not necessary to address whether there has been any two-year discontinuance of the Signs; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that the Signs were established as accessory signs prior to the modification of ZR § 42-55 on February 27, 2001 and, thus, are not eligible for legal non-conforming status as accessory signs; and

WHEREAS, the Board further finds that the current use of the Signs remains as unlawful advertising signs; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant’s registration of the Signs as accessory signs.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated January 3, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, August 7, 2012.

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**45-03-A thru 62-03-A & 64-03-A**

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED –Hall Avenue, north side of Hall Avenue, 542.56’ west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lots 60, 80, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for postponed hearing.

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**47-12-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.

SUBJECT – Application March 2, 2012 – Appeal to Department of Building’ determination that the proposed two-family building did not qualify for rear yard reduction pursuant §23-52. R3-1 zoning district.

PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86’ north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Todd Dale.

For Administration: Lisa Orrantia, Department of Buildings.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## 83-12-A & 84-12-A

APPLICANT – Richard G. Leland, Esq./Fried Frank, for Frank Ferrovicchio, owner; Millennium Billboards LLC, lessee..

SUBJECT – Application April 6, 2012 – Appeal from Department of Buildings’ determination that a sign is not entitled to continued, non-conforming use status as an advertising sign. C8-3 zoning district.

PREMISES AFFECTED – 653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot 115, Borough of Bronx.

### COMMUNITY BOARD #2BX

APPEARANCES –

For Applicant: Richard Leland and Mark Johnston.  
For Administration: Amandus Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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## 164-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Robert Hauck, lessee.

SUBJECT – Application June 11, 2012 – Proposed reconstruction and enlargement of a single family home not fronting on a legally mapped street contrary to Art. 3 Sect.36 GCL and also partially in the bed of a mapped street contrary to Art 3 Sect. 35 of the Gen. City Law.

PREMISES AFFECTED – 210 Oceanside Avenue, Block 16350, part of Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: None.

**ACTION OF THE BOARD** – Laid over to August 21, 2012, at 10 A.M., for postponed hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, AUGUST 7, 2012 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 117-11-BZ

#### CEQR #12-BSA-012Q

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (§72-21) to permit the development of a new athletic center accessory to an existing UG 3 school (*Mary Louis Academy*), contrary to maximum height and sky exposure plane (§24-521), minimum rear yard, (§24-382) minimum front yard (§24-34) and nameplates or identification signs (§22-321). R1-2 and R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

#### COMMUNITY BOARD # 8Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2011, acting on Department of Buildings Application No. 420370486, reads in pertinent part:

Proposed Use Group 3 accessory athletic center building in R1-2 and R5 zoning districts:

Exceeds the maximum height permitted pursuant to ZR Section 24-521.

Exceeds the sky exposure plane required pursuant to ZR Section 24-521.

Proposed sign exceeds the maximum size permitted pursuant to ZR Section 22-321; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R1-2 zoning district and partially within an R5 zoning district, the construction of a two-story athletic center on the existing school campus, which does not comply with zoning regulations for height, sky exposure plane, and signage, contrary to ZR §§ 24-521 and 22-321; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in

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the *City Record*, with continued hearings on June 12, 2012 and July 17, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of the application; and

WHEREAS, this application is brought on behalf of The Mary Louis Academy (the "School"), a not for profit religious educational institution; and

WHEREAS, the site is located on a corner through lot bounded by Dalny Road to the west, Wexford Terrace to the south, and Edgerton Boulevard to the east, partially within an R1-2 zoning district and partially within an R5 zoning district; and

WHEREAS, the site has a lot area of 151,470 sq. ft.; and

WHEREAS, the site is currently occupied by several School buildings, including a three- and four-story main building fronting on Wexford Terrace (the "Main Building"), three accessory residences, and a two-story convent building fronting on Edgerton Boulevard (the "Convent Building"); combined, the School buildings have a total floor area of 131,215 sq. ft. (1.48 FAR); and

WHEREAS, the applicant proposes to demolish the approximately 19,000 sq. ft. (0.13 FAR) Convent Building and construct a new 25,139 sq. ft. (0.17 FAR) accessory athletic facility and wellness center (the "Athletic Center") in its place, resulting in a combined floor area of 137,386 sq. ft. (1.58 FAR) on the entire site; and

WHEREAS, the applicant originally proposed to construct a 26,360 sq. ft. athletic facility which required additional waivers for non-complying front and rear yards; and

WHEREAS, at the direction of the Board, the applicant relocated the proposed building on the site so as to eliminate both the front yard and rear yard objections, and reduced the proposed floor area to 25,139 sq. ft.; and

WHEREAS, the applicant notes that the Convent Building no longer houses any residents, but the School occupies one wing for classrooms and administrative offices which will be relocated to the Main Building; and

WHEREAS, the proposed Athletic Center building will have the following non-compliances: two non-illuminated 50 sq. ft. identification signs (a maximum of 12 sq. ft. of identification signage is permitted); a height of 35'-0" (a maximum front wall height of 25'-0" is permitted in the R1-2 zoning district); and encroachment into the sky exposure plane for the R1-2 zoning district; and

WHEREAS, the Athletic Center will have the following uses: (1) a gymnasium, bleacher seating, fitness room, aerobics room, bathrooms, offices, and lobbies at the first floor; (2) an indoor jogging track at the mezzanine level; and (3) a multi-purpose room, viewing corridor, offices, locker rooms, and lobbies at the second floor; and

WHEREAS, because the proposed Athletic Center building does not comply with the underlying bulk regulations in the subject zoning districts, the requested variance is needed; and

WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic needs of (1) providing an athletic facility with a regulation-sized gymnasium and sufficient space to accommodate the student body; and (2) to provide identification signage large enough to enable visitors to locate the Athletic Center from the street; and

WHEREAS, the applicant states that the existing athletic facility is located within the Main Building and is only approximately 6,250 sq. ft., which does not provide sufficient space for the student body; and

WHEREAS, the applicant further states that the School's existing athletic facility has never been enlarged since opening in 1938, despite the growth of female athletics and the student body since that time; and

WHEREAS, specifically, the applicant states that the athletic program has increased by between 165 and 175 students over the last ten years, and there are typically between 290 and 405 students involved in athletics per school year; and

WHEREAS, the applicant states that the existing gymnasium in the Main Building does not provide sufficient space to comply with the Brooklyn/Queens Catholic High Schools Athletic Association regulations for court size, as a regulation court is 84'-0" by 50'-0" and the School's existing court is only 74'-0" by 38'-6"; and

WHEREAS, the applicant states that as a result of the substandard gymnasium, volleyball and basketball playoff games currently cannot be held at the School; and

WHEREAS, the applicant further states that, due to the space constraints of the existing athletic facility space in the Main Building, the track team is forced to practice in the hallways, the basketball teams have to use gyms at other schools, the cheerleading team has to practice in the auditorium, and other teams have to use classrooms for warm-up and training activities; and

WHEREAS, the applicant represents that the existing athletic facility conditions are also disruptive to school operations and cause practical difficulties for the school staff and general student body; and

WHEREAS, the applicant represents that in addition to athletics, the proposed Athletic Center will provide adequate facilities for physical education, including fitness and aerobics rooms in addition to the main gymnasium; and

WHEREAS, the applicant states that the Athletic Center will also provide space for other school functions, including parent meetings and major fundraising events; and

WHEREAS, the applicant states that the height and sky exposure waivers are required to meet the School's programmatic needs because, while the R5 zoning district permits the 35'-0" height of the proposed building, the portion of the site in the R1-2 zoning district is permitted to go to a maximum front wall height of 25'-0", which would not allow for construction of a two-story building with a double-height regulation size court and running track at the mezzanine; and

WHEREAS, the applicant submitted as-of-right plans reflecting that an athletic facility that complied with the maximum height and sky exposure plane requirements would result in less than 20'-0" of ceiling clearance in the proposed gymnasium, while 25'-0" of clearance is required to support

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tournament play; and

WHEREAS, the applicant represents that the substandard gymnasium that would result under the as-of-right scheme would require the School's teams to travel more frequently to play games at regulation-sized gymnasiums and would limit the games that could be hosted at the School; and

WHEREAS, the applicant states that the requested waiver of sign regulations is also necessary to meet the programmatic needs of the School; and

WHEREAS, specifically, the applicant states that the proposed Athletic Center will be a separate building on the School's large campus, which has frontage on three different streets and contains the Main Building along with several other accessory structures in addition to the proposed Athletic Center; and

WHEREAS, the applicant notes that the proposed signage consists of two 50 sq. ft. signs with letters spelling "The Mary Louis Academy," in capital letters, located on the east and south sides of the Athletic Center; and

WHEREAS, the applicant represents that visiting sports teams, spectators, and parents attending meetings and fundraisers will need to locate the Athletic Center from the street and the requested signage is necessary for easy identification; and

WHEREAS, the applicant represents that providing complying identification signage with a maximum of 12 sq. ft. would result in signage that could not be readily seen and identified from the street; and

WHEREAS, the applicant further represents that placement of identification signage on both sides of the Athletic Center is necessary so that the signs can be seen from both Wexford Terrace and Edgerton Boulevard; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed two-story Athletic Center is comparable in terms of bulk with the existing four-story Main Building, which fronts on Wexford Terrace; and

WHEREAS, the applicant further states that the Athletic Center will be replacing the existing two-story Convent Building, which has a similar height and is in the same general location, thereby reducing the impact of the Athletic Center from the street view and upon neighboring properties; and

WHEREAS, the applicant notes that the Athletic Center will be located in the center of the site, and the closest adjacent property is 125'-0" to the north; and

WHEREAS, the applicant states that to the west of the site are several six- and seven-story residential buildings, and to the east directly across Edgerton Boulevard is a four-story monastery; and

WHEREAS, the applicant further states that the proposed signage is also appropriate in the surrounding area, as the monastery located directly across Edgerton Boulevard has similar identifying signage, and Hillside Avenue, which maintains a commercial character and corresponding signage, runs parallel to Wexford Terrace only one block to the south of the site; and

WHEREAS, the applicant also submitted photographs of existing identification signs located at the site and at the monastery across Edgerton Boulevard, and states that they are approximately the same size as the proposed signs; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant states that the proposed waivers are minimal and the height and sky exposure plane waivers only apply to the R1-2 portion of the site, and the proposed building will comply with all other bulk requirements of the underlying zoning district; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, as noted above, the applicant revised its plans during the course of the hearing process by reducing the floor area and relocating the proposed building on the site in order to provide complying front and rear yards; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

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WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA012Q dated March 13, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R1-2 zoning district and partially within an R5 zoning district, the construction of a two-story athletic center on the existing school campus, which does not comply with zoning regulations for height, sky exposure plane, and signage, contrary to ZR §§ 24-521 and 22-321, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 5, 2012" – (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 25,139 sq. ft. (0.17 FAR); a height of 35'-0"; encroachment into the sky exposure plane; and two non-illuminated 50 sq. ft. identification signs, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT construction will proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2012.

## 191-11-BZ

### CEQR #12-BSA-052K

APPLICANT – Sheldon Lobel, P.C., for Zerillo Family Trust, owner.

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to maximum allowable floor area (§23-141(b)). R 4-1 zoning district.

PREMISES AFFECTED – 1246 77<sup>th</sup> Street, between 12<sup>th</sup> and 13<sup>th</sup> Avenues, Block 6243, Lot 24, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 17, 2011, acting on Department of Buildings Application No. 320356645, reads:

ZR 23-141(b) proposed floor area exceeds permitted one

Proposed enlargement is not permitted; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4-1 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirement for floor area ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 12, 2012 after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 77<sup>th</sup> Street, between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, within an R4-1 zoning district; and

WHEREAS, the subject site has a total lot area of 1,300 sq. ft., and is occupied by a single-family home with a floor area of 1,694 sq. ft. (1.30 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is



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available; and

WHEREAS, the subject home initially had a floor area of approximately 1,534 sq. ft. (1.18 FAR), and was subsequently enlarged to its current floor area of 1,694 sq. ft. (1.30 FAR); and

WHEREAS, the applicant now seeks to legalize the prior enlargement and to permit a further 156 sq. ft. increase in the floor area to 1,851 sq. ft. (1.42 FAR); the maximum permitted floor area is 975 sq. ft. (0.75 FAR); and

WHEREAS, at hearing, the Board directed the applicant to remove the second kitchen shown in the plans; and

WHEREAS, in response, the applicant submitted revised plans reflecting the removal of the stove from the basement level of the home; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a table and corresponding map identifying at least five other homes on the same block as the site with similarly converted garages and/or two-story rear enlargements; and

WHEREAS, the applicant notes that the site was zoned R4 until 2007, which permitted an FAR of 1.35, and submitted photographs and Department of Buildings documentation reflecting that the proposed home with an FAR of 1.42 is consistent with a number of recent enlargements in the surrounding area; and

WHEREAS, the applicant notes that it merely seeks to legalize the conversion of the basement level garage to residential floor area and to enclose the open porch above the existing first floor extension in the rear yard of the site, which is closed in on both sides by the immediately adjacent single-family homes, both of which have been extended in the rear on both the first and second story; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R4-1 zoning district,

the enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 25, 2012"-(5) sheets and "July 5, 2012"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,851 sq. ft. (1.42 FAR), as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2012.

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**5-12-BZ  
CEQR #12-BSA-061K**

APPLICANT – Moshe M. Friedman, P.E., for Aaron Herzog, owner.

SUBJECT – Application January 12, 2012 – Variance (§72-21) for the addition of a third floor to an existing two family residential building, contrary to front yard requirements (§23-146(c)), front yards and side yard requirement (§23-146(d)). R5 zoning district/Borough Park.

PREMISES AFFECTED – 812 Dahill road, northwest corner of Dahill Road and 19<sup>th</sup> Avenue, Block 5445, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Tzvi Friedman.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 27, 2011, acting on Department of Buildings Application No. 300655477, reads in pertinent part:

Proposed addition of a third floor to an existing residential building (Two Family) in an R5 District (Borough Park – optional provisions for certain R5

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and R6 districts in Brooklyn) is contrary to:

ZR 23-146(c) Front Yards

ZR 23-146(d) Side Yards

And requires a variance from the Board of Standards and Appeals as per Section 72-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed addition of a third floor to an existing two-story, two-family home, which does not comply with the underlying zoning regulations for front yards or side yards, contrary to ZR §§ 23-146(c) and 23-146(d); and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in *The City Record*, with continued hearings on June 19, 2012 and July 17, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Dahill Road and 19<sup>th</sup> Avenue, within an R5 zoning district; and

WHEREAS, the site is an irregularly shaped lot with approximately 26'-11" of frontage along Dahill Road, 34'-6" of frontage along 19<sup>th</sup> Avenue, a maximum depth of 72'-10", and a total lot area of 2,180.5 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story two-family home with a floor area of 2,144 sq. ft. (0.98 FAR), and with legally non-complying front yards along Dahill Road and 19<sup>th</sup> Avenue and a legally noncomplying side yard along the western lot line; and

WHEREAS, the applicant proposes to enlarge the home by constructing a third story, which will be used in conjunction with the existing second story as a duplex unit; and

WHEREAS, the proposed home will have the following complying parameters: 3,216 sq. ft. of floor area (1.48 FAR); a lot coverage of 49 percent; no side yard along the western lot line; a total height of 34'-11"; and two parking spaces; and

WHEREAS, however, the applicant proposes to maintain the existing non-complying side yard with a width of 1'-3½" along the western lot line (a side yard with a minimum width of 20'-0" is required), a front yard with a depth of 1'-0" along Dahill Road, and no front yard along 19<sup>th</sup> Avenue (two front yards with minimum depths of 5'-0" and 10'-0" are required); and

WHEREAS, the applicant states that yard relief is necessary for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the shallowness and irregular shape of the lot; and

WHEREAS, the applicant states that the subject site is an irregular triangular shaped lot with a maximum depth of only 72'-10"; and

WHEREAS, the applicant represents that, due to the lot's shallowness and irregular shape, and the configuration of the existing building on the lot, complying strictly with the side and front yard requirements would severely restrict the ability to enlarge the home with a usable third floor; and

WHEREAS, the applicant notes that the proposed third story is a straight line extension of the existing two-story home which has legal non-complying front and side yards; and

WHEREAS, the applicant states that an as-of-right third floor would have a sharp, angled triangular shape at the side and rear of the building, and a cut off, set back front that would severely limit the interior size and layout of the third story; and

WHEREAS, the applicant submitted an as-of-right site plan, which reflects that the complying third story floor plate would create significant inefficiencies for residential use; and

WHEREAS, the applicant represents that the significantly smaller, oddly shaped addition that would result from an as-of-right design would not be feasible for its intended use as a bedroom floor in conjunction with the existing second floor unit; and

WHEREAS, as to the uniqueness of the conditions on the site, the applicant submitted a radius diagram reflecting that the subject lot is the shallowest lot on the block; and

WHEREAS, the applicant also submitted a block building length study which reflects that, with the exception of the similarly irregular lot located adjacent to the site, all of the buildings on the subject block are more than 65'-0" in length, while the subject building is significantly smaller, with a length of only 59'-0"; and

WHEREAS, accordingly, the applicant states that the requested front and side yard relief is necessary in order to provide a third story that is feasible for residential use; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable front and side yard regulations; and

WHEREAS, as discussed above, the subject site is an irregularly shaped triangular lot, and given the location of the existing residential building at the site, there is no way to configure a usable residential use at the third floor that complies with the underlying zoning regulations, despite the existence of approximately 1,450 sq. ft. of available floor area on the site; and

WHEREAS, the applicant notes that the subject building is an owner-occupied two-family home, and the requested front and side yard relief is necessary in order to provide a reasonable third floor residential use at the site; and

WHEREAS, the Board agrees that due to the unique physical conditions on the site, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family to three-family homes; and

WHEREAS, the applicant notes that the proposed bulk is

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compatible with nearby residential development and that it complies with all relevant bulk regulations other than front and side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R5 zoning district regulations for FAR, lot coverage, and height; and

WHEREAS, as noted above, the proposed third story is a straight line extension of the existing two-story home on the site; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's shallow depth and irregular shape; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for front and side yards, is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, the proposed addition of a third floor to an existing two-story, two-family home, which does not comply with the underlying zoning regulations for front yards or side yards, contrary to ZR §§ 23-146(c) and 23-146(d); *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 5, 2012" – (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 3,216 sq. ft. of floor area (1.48 FAR); a front yard with a minimum depth of 1'-0" along Dahill Road; no front yard along 19<sup>th</sup> Avenue; a side yard with a minimum width of 1'-3½" along the western lot line; no side yard along the northern lot line; a total height of 34'-11"; and parking for two cars, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be subject to DOB review and approval;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2012.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Othel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## 97-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik, Ian Rasmussen, Barbara Cohen, Jose Montero and Kyle Wright.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for continued hearing.

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## 104-11-BZ

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

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For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to August 7, 2012, at 1:30 P.M., for continued hearing.

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## 192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for adjourned hearing.

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## 2-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Tehjila Development, LLC, owner.

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29' south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

### COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for continued hearing.

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## 11-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application November 17, 2012 – Special Permit (§73-622) for the legalization of an enlargement to an existing single-family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 3599 Bedford Avenue, East side of Bedford Avenue, between Avenue N and Avenue O, Borough of Brooklyn, Block 7679, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Atلمان.

**ACTION OF THE BOARD** – Laid over to

September 11, 2012, at 1:30 P.M., for continued hearing.

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## 12-12-BZ & 110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre A. Carson and Daniel Lane.

For Opposition: Stuart Klein, Terri Cude of CB 2M and Tobi Bergman.

**ACTION OF THE BOARD** – Laid over to September 11, 2012 at 1:30 P.M., for continued hearing.

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## 61-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel, Barbara Cohen, Michael White, David Reck and Shlomo Wygoda Wygoda.

For Opposition: Juan Reyes, James Sachs, Matt Borden Tobi Bergman of CB 2, Georgette Fleischer, Lora Tenenbaum, Tessa Grundon and Kristin Dornig Krantz.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for continued hearing.

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## 68-12-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90<sup>th</sup> Street, Block 9093, Lot 13, Borough of Queens.

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# MINUTES

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## COMMUNITY BOARD #9Q

### APPEARANCES –

For Applicant: Hiram A. Rothkrug.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
September 11, 2012, at 1:30 P.M., for decision, hearing  
closed.

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## 141-12-BZ

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc.,  
owner.

SUBJECT – Application May 3, 2012 – Re-Instatement  
(§§11-411 & 11-412) of a previously approved variance  
which permitted retail (UG 6) in a residential district which  
expired on October 14, 1989; amendment to permit the  
installation of awnings/signage, and changes to the interior  
layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164<sup>th</sup> Street, southwest  
corner of 65<sup>th</sup> Street, Block 6762, Lot 53, Borough of  
Queens.

## COMMUNITY BOARD #8Q

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to  
September 11, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on July 10, 2012, under Calendar No. 359-01-BZ and printed in Volume 97, Bulletin Nos. 27-29, is hereby corrected to read as follows:

### 359-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Bnos Zion of Bobov, Inc., owner.

SUBJECT – Application February 3, 2012 – Amendment to previously approved variance (§72-21) for a school (*Bnos Zion of Bobov*). Amendment would legalize the enclosure of an one-story entrance, contrary to lot coverage and floor area ratio (§24-11). R6 zoning district.

PREMISES AFFECTED – 5002 14<sup>th</sup> Avenue, aka 5000-5014 14<sup>th</sup> Avenue, aka 1374-1385 50<sup>th</sup> Street, Block 5649, Lot 38, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Elizabeth Bennett.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance legalizing the existing sixth floor in a Use Group 3 religious school/yeshiva building; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with a continued hearing June 5, 2012, and then to decision on July 10, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of the intersection of 14<sup>th</sup> Avenue and 50<sup>th</sup> Street, within an R6 zoning district; and

WHEREAS, the site is occupied by a seven-story (including penthouse) community facility building with a floor area of 69,350 sq. ft. (5.77 FAR), which is used as a private, Orthodox Jewish religious school for females ranging from pre-Kindergarten to 12<sup>th</sup> grade (the “Yeshiva”); and

WHEREAS, the adjacent site to the west, on Lot 35, is occupied by a new five-story school building which is also owned by the applicant; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board granted a variance to legalize the creation of the sixth floor within the envelope of the existing building, which did not comply with the zoning regulations for

floor area ratio; and

WHEREAS, the applicant now requests an amendment to legalize the one-story enclosure of an existing areaway adjacent to the subject building; and

WHEREAS, the applicant states that the areaway is located along the northern side lot line adjacent to the new five-story school building on Lot 35, and the areaway is approximately 10'-0" wide by 61'-4" deep; and

WHEREAS, the applicant further states that the enclosure of the areaway creates approximately 672 sq. ft. of additional floor area, increasing the total floor area from 69,350 sq. ft. (5.77 FAR) to 70,022 sq. ft. (5.82 FAR), and increases the lot coverage from 94.4 percent to 100 percent; and

WHEREAS, the applicant notes that the enclosure of the areaway has created a covered one-story shared entrance way from 50<sup>th</sup> Street that is utilized by both the subject building and the adjacent school for ingress and egress; and

WHEREAS, the applicant represents that the entrance way is necessary to meet the programmatic needs of the Yeshiva because it serves as a separate entrance for women during religious school-related functions attended by both genders, in accordance with principles of the Orthodox Jewish faith; and

WHEREAS, the applicant notes that the entrance way also provides sheltered handicapped access by means of a ramp; and

WHEREAS, the applicant represents that the enclosure has minimal impacts on the exterior appearance and building envelope of the subject building, and no other changes to the interior layout or operations of the Yeshiva are proposed; and

WHEREAS, at hearing, the Board directed the applicant to clarify that the egress for the subject building and the adjacent building on Lot 35 comply with all applicable egress requirements; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the egress for both buildings complies with all applicable Building Code requirements, and the shared use of the enclosed areaway for the third required means of egress for both buildings is permitted; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 26, 2002, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the previously-approved plans; *on condition* that all work substantially complies to drawings marked ‘Received May 22, 2012’ – Fourteen (14) sheets; and *on further condition*:

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or

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# MINUTES

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configuration(s) not related to the relief granted.”  
(DOB Application No. 320235964)

Adopted by the Board of Standards and Appeals, July 10,  
2012.

**\*The resolution has been amended to remove the word  
“glass” in the 9th WHEREAS. Corrected in Bulletin  
Nos. 32-33, Vol. 97, dated August 15, 2012.**

## **\*CORRECTION**

This resolution adopted on July 24, 2012, under Calendar  
No. 58-12-BZ and printed in Volume 97, Bulletin No. 31, is  
hereby corrected to read as follows:

### **58-12-BZ**

#### **CEQR #12-BSA-091K**

APPLICANT – Law Office of Fredrick A. Becker, for  
Shlomo Dabah, owner.

SUBJECT – Application March 15, 2012 – Special Permit  
(\$73-622) to permit the enlargement of an existing single  
family home contrary to floor area, lot coverage and opens  
space (§23-141); side yards (§23-461); less than the required  
rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3960 Bedford Avenue, west side  
of Bedford Avenue between Avenue R and Avenue S, block  
6830, Lot 30, Borough of Brooklyn.

#### **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Application granted on  
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough  
Commissioner, dated February 16, 2012, acting on  
Department of Buildings Application No. 320303523, reads  
in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in  
that the proposed floor area ratio exceeds the  
maximum permitted
2. Proposed plans are contrary to ZR 23-141 in  
that the proposed open space is less than the  
minimum required
3. Proposed plans are contrary to ZR 23-141 in  
that the proposed lot coverage exceeds the  
maximum permitted
4. Proposed plans are contrary to ZR 23-461 in  
that the proposed side yard is less than  
minimum required
5. Proposed plans are contrary to ZR 23-47 in  
that proposed rear yard is less than minimum  
required; and

WHEREAS, this is an application under ZR §§ 73-622  
and 73-03, to permit, in an R3-2 zoning district, the  
proposed enlargement of a single-family home, which does  
not comply with the zoning requirements for floor area ratio  
(“FAR”), open space, lot coverage, side yards, and rear  
yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this  
application on June 19, 2012 after due notice by publication  
in *The City Record*, and then to decision on July 24, 2012;  
and

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# MINUTES

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue R and Avenue S, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,948 sq. ft. (0.49 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,948 sq. ft. (0.49 FAR) to 2,829 sq. ft. (0.71 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 59 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-10" (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary

to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 6, 2012"-(6) sheets and "July 10, 2012"-(4) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,829 sq. ft. (0.71 FAR); a minimum open space of 59 percent; a maximum lot coverage of 41 percent; a side yard with a minimum width of 4'-10" along the northern lot line; a side yard with a width of 8'-0" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 24, 2012.

**\*The resolution has been amended to reflect changes in the first WHEREAS. Corrected in Bulletin Nos. 32-33, Vol. 97, dated August 15, 2012.**



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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 97, No. 34

August 22, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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Tuesday, August 14, 2012**

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21-12-A	55 Louise Lane, Staten Island

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66-12-BZ	223-237 Nicholas Avenue, Manhattan
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104-12-BZ	178-21 & 179-19 Hillside Avenue, Queens
160-12-BZ	820 Concourse Village West, Bronx
163-12-BZ	435 East 30 <sup>th</sup> Street, Manhattan

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# DOCKET

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New Case Filed Up to August 14, 2012  
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**244-12-BZ**

600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot(s) 10, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit a physical culture establishment. M1-5 zoning district. M1-5 district.  
-----

**245-12-A**

515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B., Block 401, Lot(s) 56, Borough of **Manhattan, Community Board: 3**. Appeal pursuant to Section 310(2) of the Multiple Dwelling Law, requesting that the Board vary several requirements of the MDL. R7B Zoning District R7B district.  
-----

**246-12-A**

515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B., Block 401, Lot(s) 56, Borough of **Manhattan, Community Board: 3**. Appeal seeking a determination that the owner of the property has acquired a common law vested right to complete construction under the prio R7-2 zoning .R7B Zoning District . R7B district.  
-----

**247-12-A**

659 Highland Place, east side of Highland Place, 222.5' north of 12th Avenue., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14**. Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R4 Zoning District. R4 district.  
-----

**248-12-A**

45 Tioga Walk, east side of Tioga Walk, 68' south of West End Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Proposed building is not fronting a mapped street, contrary to § 36 General City Law and in the bed of a mapped street, contrary to Art. §35 of the General City Law. Private disposal system in the bed of a mapped street contrary to Department of Buildings' policy. R4 zoning district. R4 district.  
-----

**249-12-BZ**

1320 East 27th Street, west side of East 27th Street, 140' south of Avenue M, Block 7662, Lot(s) 60, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing one family, three story dwelling. R2 zoning district. R2 district.  
-----

**250-12-BZ**

2410 Avenue S, south side of Avenue S between East 24th and Bedford Avenue., Block 7303, Lot(s) 4, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single family residence. R3-2 zoning district. R3-2 district.  
-----

**251-12-A**

330 West 59th Street, west of southwest corner of 1st Avenue and East 59th Street, Block 1351, Lot(s) 36, Borough of **Manhattan, Community Board: 8**. Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign. C2-5 Zoning District C2-5 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**SEPTEMBER 11, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 11, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**739-76-BZ**

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application June 1, 2012 – Extension of Term of a Special Permit (§73-35) for the continued operation of an Amusement arcade (*Peter Pan Games*) which expired on April 10, 2012; Waiver of the Rules. C4-1 zoning district. PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.  
**COMMUNITY BOARD #7Q**

-----  
**93-97-BZ**

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted Variance (72-21) to permit the change in use of a portion of the existing second floor (5902sf) which is currently occupied by 13 off street accessory parking spaces to UG 6 office use. C4-3 zoning district. PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

**COMMUNITY BOARD #7Q**

-----  
**194-02-BZ**

APPLICANT – Sheldon Lobel, P.C., for Shore Plaza LLC, owner; Staten Island Fitness Group, LLC, lessee.

SUBJECT – Application May 16, 2012 – Extension of Term of a previously granted Special permit (§73-36) for the continued operation of a Physical Culture Establishment (*Planet Fitness*) which expired on December 1, 2011; Waiver of the Rules. C4-3 zoning district. PREMISES AFFECTED – 1775 South Avenue, southeast corner of the intersection formed by Meredity and South Avenues, Block 2800, Lot 37, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**330-05-BZ**

APPLICANT – Vito J. Fossella, P.E., LPEC, for Frank Bennett, owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment

(AF Bennett Salon and Wellness Spa) which expired on January 30, 2102; Extension of Time to Complete Construction which expired on January 30, 2011; Amendment to further enlarge the PCE into the neighboring cellar; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 350 New Dorp Lane, south side of New Dorp Lane, 260' east of corner formed by the intersection of New Dorp Lane and Clawson Avenue, Block 4221, Lot 53, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**APPEALS CALENDAR**

**194-12-A**

APPLICANT – John Sullivan, for Gelu-Durius Musica, owner.

SUBJECT – Application June 15, 2012 – Appeal challenging the Department of Buildings' determination that the proposed Nursery School complies with ZR Section 24-11. R2A Zoning District.

PREMISES AFFECTED – 213-14 Union Turnpike, south side of Union Turnpike at corner of 214<sup>th</sup> Street, Block 7787, Lot 44, Borough of Queens.

**COMMUNITY BOARD #11Q**

-----  
**201-12-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Scott Whalen, owner; TSC Building, LLC, lessee.

SUBJECT – Application June 28, 2012 – Proposed construction of a single family home that does not front a legally mapped street contrary to General City Law Section 36 . R3A Zoning District.

PREMISES AFFECTED – 112 Alberta Avenue, southeast corner of intersection of Wild Avenue and Alberta Avenue, Block 2643, Lot 10, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

-----  
**SEPTEMBER 11, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 11, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**ZONING CALENDAR**

**156-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon's Church owners.

SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story community

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# CALENDAR

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facility (*St. Simeon's Episcopal Church*) (UG4 house of worship) and residential (UG 2 supportive housing) building contrary to setback, floor area, lot coverage and density requirements. R8 zoning district.

PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165<sup>th</sup> Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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## **82-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home contrary to floor area, open space and lot coverage (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 2011 East 22<sup>nd</sup> Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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## **86-12-BZ**

APPLICANT – Jeremiah H. Candraeva, Esq., Troutman Sanders LLP, for Parkwood Realty Associates, LLC c/o Park It Management Co., owner.

SUBJECT – Application April 9, 2012 – Special Permit (§73-63) to allow for an enlargement (1,366 square feet) above the maximum permitted floor area permitted by the underlying district regulations. R8B zoning district regulations.

PREMISES AFFECTED – 158 West 83<sup>rd</sup> Street, western boundary of the site is 150' east of Amsterdam Avenue on West 83<sup>rd</sup> Street, Block 1213, Lot 58, Borough of Manhattan.

**COMMUNITY BOARD #4BK**

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## **189-12-BZ**

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit a transient hotel (Use Group 5), contrary to use regulations. C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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## **198-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.

SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the construction of an enlargement to the existing buildings, which would contain Use Group 6 retail and Use Group 2 residential use, and require modification of various bulk and supplementary use regulations. C5-1(MP), R8B zoning district.

PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Block 1389, Lot 25, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, AUGUST 14, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**292-55-BZ**

APPLICANT – Alfonso Duarte, for Narkeet Property Inc.,  
owner.

SUBJECT – Application April 2, 2012 – Extension of Term  
(§11-411) for the continued operation of an Automotive  
Service Station (GULF) which expired on April 10, 2011;  
Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 239-15 Jamaica Avenue,  
northwest corner of 240<sup>th</sup> Street, Block 8001, Lot 1,  
Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Application granted on  
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a re-opening, and an  
extension of term for a previously granted variance to permit  
the operation of a gasoline service station with accessory uses,  
which expired on April 10, 2011; and

WHEREAS, a public hearing was held on this  
application on June 12, 2012, after due notice by publication in  
*The City Record*, with a continued hearing on July 17, 2012,  
and then to decision on August 14, 2012; and

WHEREAS, the premises and surrounding area had site  
and neighborhood examinations by Chair Srinivasan,  
Commissioner Hinkson, Commissioner Montanez, and  
Commissioner Ottley-Brown; and

WHEREAS, Community Board 13, Queens,  
recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall  
recommends approval of this application; and

WHEREAS, the subject site is located on a corner  
through lot bounded by 93<sup>rd</sup> Road to the north, 240<sup>th</sup> Street to  
the east, and Jamaica Avenue to the south, within an R3-2  
zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since April 10, 1956 when, under the subject  
calendar number, the Board granted a variance to permit the  
construction of a gasoline service station with accessory uses,

for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended  
and the term extended by the Board at various times; and

WHEREAS, most recently, on February 25, 2003, the  
Board granted a ten-year extension of term, which expired on  
April 10, 2011, and an amendment to permit the construction  
of a new metal canopy over the gasoline pumps; and

WHEREAS, the applicant now requests an additional  
ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and

WHEREAS, in response to concerns raised by the  
Community Board and the Queens Borough President, the  
applicant submitted revised plans reflecting that (1) the  
structure that was constructed to store tires has been  
removed from the site, (2) the ground signs have been  
removed from the site, (3) the clothing collection bins have  
been removed from the site, and (4) the landscaping has  
been updated; and

WHEREAS, the applicant also submitted an affidavit  
from the owner stating that (1) no outdoor structures or  
enclosures will be constructed on the site, (2) no clothing  
bins will be placed on the site, and (3) the site will be kept in  
a clean and orderly manner and the landscaping will be  
maintained; and

WHEREAS, at hearing, the Board questioned whether  
the signage on the site complies with C1 district regulations;  
and

WHEREAS, in response, the applicant submitted a  
revised signage analysis reflecting that the signage complies  
with C1 district regulations, with the exception of a 4.37 sq.  
ft. overage for the signs facing Jamaica Avenue, which the  
applicant requests that the Board allow to remain; and

WHEREAS, based upon the above, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens*  
and *amends* the resolution, dated April 3, 1956, so that as  
amended this portion of the resolution shall read: “to extend  
the term for ten years from April 10, 2011, to expire on  
April 10, 2021; *on condition* that all use and operations shall  
substantially conform to plans filed with this application  
marked ‘Received June 27, 2012’ - (4) sheets; and *on further  
condition*:

THAT the term of the grant will expire on April 10,  
2021;

THAT the site will be maintained free of debris and  
graffiti;

THAT no outdoor structures or enclosures will be  
constructed on the site;

THAT no clothing bins will be placed on the site;

THAT landscaping will be maintained as indicated on the  
BSA-approved plans;

THAT all signage on the site will comply with the BSA-  
approved plans;

THAT the above conditions will be reflected on the  
certificate of occupancy;

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THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals August 14, 2012.

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## 579-78-BZ

APPLICANT – Alfonso Duarte, for LEM LEE 58 L.P c/o Mautner-Glick Management, owner.

SUBJECT – Application April 24, 2012 – Extension of Term of a previously-approved variance (§72-21) which permitted retail use on a portion of the first floor and cellar of an existing six story multiple dwelling, which expired on January 30, 2004; Waiver of the Rules. R8B zoning district. PREMISES AFFECTED – 236-238 East 58<sup>th</sup> Street, south side 160’ west of 2<sup>nd</sup> Avenue, Block 1331, Lot 31, Borough of Manhattan.

### COMMUNITY BOARD #6M

#### APPEARANCES –

For Applicant: Alfonso Duarte.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for the continued use of a portion of the cellar and first floor of a six-story building for retail use (Use Group 6), which expired on January 30, 2004; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in *The City Record*, and then to decision on August 14, 2012; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, the subject site is located on the south side of East 58<sup>th</sup> Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since January 30, 1979 when, under the subject calendar number, the Board granted a variance to permit the conversion of the front portion of the cellar and first floor of an existing six-story residential building into retail stores, for a term of five years; and

WHEREAS, subsequently, the grant was amended and

the term extended at various times; and

WHEREAS, most recently, on May 17, 1994, the Board granted a ten-year extension of term, which expired on January 30, 2004; and

WHEREAS, the applicant now seeks an additional ten-year extension of the term; and

WHEREAS, at hearing, the Board questioned whether the signage on the site complies with C1 district signage regulations; and

WHEREAS, in response, the applicant states that the signage complies with C1 district regulations with the exception of the projection of the canopy, which it requests that the Board allow to remain; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 30, 1979, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the date of this grant, to expire on August 14, 2022; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 24, 2012’-(3) sheets and ‘July 31, 2012’-(2) sheets; and *on further condition*:

THAT the term of the grant will expire on August 14, 2022;

THAT all signage on the site will comply with the BSA-approved plans;

THAT the above condition will appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals August 14, 2012.

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## 51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application February 4, 2010 – Amendment of a variance (§72-21) which permitted a Physical Culture Establishment and a dance studio (Use Group 9), contrary to use regulations. The amendment seeks to enlarge the floor area of the PCE; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2011; Waiver of the Rules. C1-2/R2 zoning district.

PREMISES AFFECTED – 188-02/22 Union Turnpike, Located on the south side of Union Turnpike between 188<sup>th</sup> and 189<sup>th</sup> Streets, Block 7266, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

#### APPEARANCES –

# MINUTES

For Applicant: Elizabeth Bennett.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy, which expired on May 25, 2011, and an amendment to a previously granted variance for a physical culture establishment (“PCE”) and dance studio, to permit a 2,332 sq. ft. enlargement of the first floor; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, and then to decision on August 14, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of this application, with the condition that any future advertisement not indicate any place to park in the community; and

WHEREAS, the site is located on the south side of Union Turnpike, between 188<sup>th</sup> Street and 189<sup>th</sup> Street, within a C1-2 (R2A) zoning district; and

WHEREAS, the site is occupied by a one-story and cellar commercial building; and

WHEREAS, the PCE occupies a total of 1,072 sq. ft. of floor area on the first floor and an additional 8,647 sq. ft. of floor space in the cellar, and the existing dance studio occupies 1,198 sq. ft. of floor area on the first floor and approximately 3,473 sq. ft. of additional floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2006 when, under the subject calendar number, the Board granted a variance to permit the operation of a PCE and the legalization of the existing dance studio at the subject site, with certain conditions; and

WHEREAS, on February 10, 2009, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, most recently, on May 25, 2010, the Board granted an extension of time to obtain a certificate of occupancy and an amendment to permit (1) the expansion of the PCE use to a 1,072 sq. ft. portion of the first floor, and (2) a change in the operator of the PCE; and

WHEREAS, the applicant now seeks an additional extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained by the stipulated date primarily due to open applications at DOB attributed to other tenants of

the subject commercial building; and

WHEREAS, the applicant also seeks an amendment to permit an expansion of the PCE use to add 2,332 sq. ft. of floor area on the first floor, resulting in an increase in the total floor area occupied by the PCE from 1,072 sq. ft. to 3,404 sq. ft., and an increase in the total floor space occupied by the PCE from 9,719 sq. ft. to 12,051 sq. ft.; and

WHEREAS, the applicant proposes to enlarge the PCE by expanding its operations into the adjacent storefront, which it represents has been vacant since November 2009 despite good faith efforts by the owner to find a viable tenant; and

WHEREAS, the applicant states that the proposed extension of the PCE to the adjacent storefront is necessary to alleviate the overcrowded conditions that have developed at the PCE due to the lack of sufficient open and uninterrupted floor space at the site; and

WHEREAS, the applicant further states that the proposed expansion of the PCE will provide additional space for exercise equipment, storage and offices, and additional locker rooms; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, the applicant represents that it will take between nine and 12 months to complete the proposed renovation of the PCE and obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy and the proposed amendments to the grant are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 12, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to August 14, 2013, and to permit a 2,332 sq. ft. expansion of the PCE on the first floor; *on condition* that any and all work shall substantially conform to drawings filed with this application marked ‘Received April 26, 2012’-(5) sheets; and *on further condition*:

THAT signage on the site shall comply with C1 district regulations;

THAT the above condition shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by August 14, 2013;

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must 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)



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and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 402279495)

Adopted by the Board of Standards and Appeals, August 14, 2012.

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**294-06-BZ**

APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.

SUBJECT – Application February 8, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.

PREMISES AFFECTED – 31-11 Broadway, between 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 613, Lots 1 & 4, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES –

For Applicant: Nadia Alexis.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a physical culture establishment (“PCE”), to permit a correction to the calculation of the floor area and to permit a 4,700 sq. ft. enlargement of the cellar; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 14, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of Broadway, between 31<sup>st</sup> Street and 32<sup>nd</sup> Street, partially within a C4-2A zoning district and partially within a C4-3 zoning district; and

WHEREAS, the site is occupied by a three-story and cellar commercial building; and

WHEREAS, the PCE occupies a total of 28,434 sq. ft. of floor area on the first, second, and third floors; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1921 when, under BSA Cal. No. 628-21-BZ, the Board granted a variance to permit the construction of a movie theater in what was formerly a residential district; the theater has since been demolished; and

WHEREAS, on October 17, 1967, under BSA Cal. No. 97-67-BZ, the Board granted a variance to permit the use of the cellar to include an eating and drinking

establishment with cabaret; this establishment is still operating at the site; and

WHEREAS, most recently, on April 10, 2007, the Board granted a special permit for the establishment of a PCE at portions of the cellar level and first floor, and the entire second and third floors; and

WHEREAS, the applicant states that the prior approval showed the PCE as occupying 27,271 sq. ft. of floor area, however, the plans have since been corrected to include an additional 1,163 sq. ft. of floor area which had been unintentionally omitted; and

WHEREAS, the applicant now seeks an amendment to permit an expansion of the PCE to include an additional 4,700 sq. ft. of floor space at the cellar level; and

WHEREAS, at hearing, the Board questioned whether the proposed signage was in compliance with the C4 district signage regulations; and

WHEREAS, in response, the applicant submitted a revised signage analysis reflecting that the signage at the site complies with the underlying district signage regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the grant is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 10, 2007, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received February 8, 2012”-(4) sheets and “Received May 18, 2012”-(1) sheet; and *on further condition*:

THAT signage on the site will comply with C4 district regulations;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”  
(DOB Application No. 402278600)

Adopted by the Board of Standards and Appeals, August 14, 2012.

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**39-65-BZ**

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment of a previously approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate

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of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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## 365-79-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for 89-52 Queens LLC, owner.

SUBJECT – Application February 21, 2012 – Amendment of a variance (§72-21) which allowed a hospital to be built contrary to bulk regulations. The amendment would convert the hospital building to commercial, community facility and residential uses. R6/C1-2 zoning district.

PREMISES AFFECTED – 90-02 Queens Boulevard, Hoffman Drive and Queens Boulevard, block 2857, Lot 36, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath, David Cuff and Yuriy Bolyshak.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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## 406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause and Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application May 22, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously-approved special permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on May 3, 2012. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to

September 11, 2012, at 10 A.M., for decision, hearing closed.

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## 25-89-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for St. John's Garage LLC, owner.

SUBJECT – Application February 23, 2012 – Amendment of a variance (§72-21) which allowed for an accessory parking garage to be built for a hospital. The amendment seeks to permit the accessory parking to be used for community facility, commercial and residential uses. R6B zoning district.

PREMISES AFFECTED – 58-04 Hoffman Drive, 58<sup>th</sup> Avenue and Hoffman Drive, Block 2860, Lot 16, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath, David Cuff and Yuriy Bolyshak.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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## 68-94-BZ

APPLICANT – Troutman Sanders, LLP, for Bay Plaza Community Center, LLP, owner; Bally's Total Fitness of Greater New York, lessee.

SUBJECT – Application June 26, 2012 – Extension of Time to obtain a certificate of occupancy for a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Bally's Total Fitness*) on the first and second floors of the Co-Op City Bay Plaza Shopping Center which expired on June 16, 2012; Waiver of the Rules.C4-3/M1-1 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Baychester Avenue and The Hutchenson River Parkway, Block 5141, Lot 810, Borough of Bronx.

## COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Jeremiah Candreva.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## 53-01-BZ

APPLICANT – Sheldon Lobel, P.C., for Charter Management Group, LLC, owner; Eun Sung, Inc., lessee.

SUBJECT – Application April 27, 2012 – Extension of Term of a previously granted special permit (73-36) for the continued operation of a physical culture establishment (*Silver Star Spa*) in a portion of the first and cellar floors of an existing commercial building which expired on July 10, 2010; Waiver of the Rules. C5-3/C6-4,5 (MID) zoning district.

PREMISES AFFECTED – 6 West 48<sup>th</sup> Street, located on the south of West 48<sup>th</sup> Street between Fifth and Sixth Avenues, Block 1263, Lot 43, Borough of Manhattan.

### COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Elizabeth Bennett.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## 164-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center LLC, owner; ME Clinic Two LLC, lessee.

SUBJECT – Application April 23, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*). The amendment seeks to enlarge the use. C4-1 district.

PREMISES AFFECTED – The Crossings @ Staten Island Mall (280 Marsh Avenue), north of Platinum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 83-11-A

APPLICANT – Marvin B. Mitzner, Esq., for 159 West 78<sup>th</sup> Street, Corp., for Felix and Lisa Oberholzer-Gee, owners.

SUBJECT – Application June 9, 2011 – Appeal pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for a one-story enlargement of a four-story building, contrary to Multiple Dwelling Law §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 159 West 78<sup>th</sup> Street, north side of West 78<sup>th</sup> Street, between Columbus and Amsterdam Avenues, Block 1150, Lot 8, Borough of Manhattan.

### COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 10, 2011, acting on Department of Buildings Application No. 120553187 reads, in pertinent part:

Proposed enlargement of a converted dwelling exceeds 25% of the area at the 4<sup>th</sup> floor which is contrary to MDL 171-2(f) hence it is not permitted; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary height and bulk requirements in order to allow for the proposed partial one-story vertical enlargement of the subject four-story and basement residential building from office use, contrary to MDL § 171(2)(f); and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 14, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends approval of the proposed partial one-story enlargement, but objects to the design of the proposed replacement windows for the front of the fourth floor; and

WHEREAS, the subject site is located on the north side of West 78<sup>th</sup> Street, between Amsterdam Avenue and Columbus Avenue, in an R8B zoning district within the Upper West Side Historic District; and

WHEREAS, the site has 19 feet of frontage along West 78<sup>th</sup> Street, a depth of approximately 102 feet, and a total lot area of 1,941 sq. ft.; and

WHEREAS, the site is occupied by a four-story and basement non-fireproof residential building; and

WHEREAS, the applicant states that the existing

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building was constructed in approximately 1900 and is currently occupied by five residential units, with one unit on each floor; and

WHEREAS, the subject building has a floor area of approximately 5,597 sq. ft. (2.88 FAR) and a height of 58'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a partial fifth floor containing an additional 646 sq. ft. of floor area; and

WHEREAS, the applicant states that the proposed fifth floor will be used in conjunction with the existing fourth floor unit and will therefore not increase the number of units within the subject building; and

WHEREAS, the applicant further states that the proposed enlargement will increase the floor area of the subject building from 5,597 sq. ft. (2.88 FAR) to 6,243 sq. ft. (3.22 FAR) (the maximum permitted floor area is 7,764 sq. ft. (4.0 FAR)), and will increase the height of the building from 58'3" to 67'-4" (the maximum permitted height is 75'-0"); and

WHEREAS, the applicant notes that the proposed fifth floor enlargement will be set back 16'-10" from the building's front façade so as not to be visible from the street; and

WHEREAS, MDL § 171(2)(f) states that it is unlawful to "enlarge or extend any converted dwelling so as to exceed by more than twenty-five per centum the area which such dwelling had on any floor at the time of its conversion..."; and

WHEREAS, because the proposed 646 sq. ft. enlargement at the fifth floor exceeds 25 percent of the area on the fourth floor, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL § 171(2)(f); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed in approximately 1900; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 171(2)(f) relates to height and bulk; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a)(1); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant notes that MDL § 171(2)(f) permits the enlargement of a converted dwelling up to 25 percent of the floor area of any floor, as it existed at the time the dwelling was converted; however, since there was no fifth

floor at the time of the building's conversion, it has a calculated floor area of zero; and

WHEREAS, the applicant states that since the fifth floor has a floor area of zero, MDL § 171(2)(f) effectively prevents any vertical enlargement of the subject building<sup>1</sup>; and

WHEREAS, the applicant further states that the fourth floor cannot practicably be enlarged horizontally to make up for this deficit because it would require cantilevering over the third floor, which is cost-prohibitive, and would impermissibly diminish the light and air to the rear windows of the third floor unit; and

WHEREAS, the applicant notes that the fourth floor also has less floor area as compared to the basement, first, and second floors, which are benefitted by a 13-ft. extension in the rear of the building, and as a result a horizontal enlargement of the fourth floor that complies with MDL § 171(2)(f) would be substandard in size (a complying enlargement of the fourth floor would be limited to approximately 234 sq. ft.); and

WHEREAS, the applicant represents that because a vertical enlargement is not permitted and a horizontal enlargement is impracticable, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement would increase the FAR of the building from 2.88 to 3.22; and

WHEREAS, the applicant represents that practical difficulties also arise regarding the use and enjoyment of the existing roof space; and

WHEREAS, specifically, the applicant states that although there is currently no habitable structure on the roof there is a usable deck on a portion of the roof, and the abutting properties to the east and west of the subject building both contain rooftop penthouses with large walls extending beyond the penthouse structures, thereby creating a canyon effect on the subject site's roof; and

WHEREAS, the applicant represents that the surrounding conditions cast the subject building's roof deck in shadow and diminish its usefulness; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL § 171(2)(f) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 ("Legislative Finding") provides that the intent of the law is to

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<sup>1</sup> The vertical enlargement is also specifically prohibited pursuant to MDL §171(2)(a).

# MINUTES

protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire...”; and

WHEREAS, accordingly, the applicant represents that the proposed construction promotes the intent of the law because: (1) it will not increase the number of residents in the building because the proposed fifth floor will be used in conjunction with the existing fourth floor unit, and therefore will not result in overcrowding within the building; (2) it will be modest in size and set back from the front and rear facades, thereby providing sufficient light and air to the proposed fifth floor without diminishing access to light and air for other units in the building; and (3) it will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the addition of sprinklers to both the existing fourth floor and the proposed fifth floor, and all common areas of the building will be fully sprinklered and upgraded as necessary; (2) new, non-combustible gypsum cement board cladding will be installed on all stair treads, risers, and exposed stringers; (3) porcelain tile flooring will be installed at hallways, in addition to porcelain tile matching stair treads and risers at all stairs; (4) all existing wood stair rails will be replaced with metal; (5) a new layer of fire resistant gypsum board will be installed to the underside of the existing staircases and landings; and (6) all doors leading to the apartments and cellar will have improved fireproof self-closing doors; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height and bulk requirements of MDL § 171(2)(f) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”) approving work associated with the proposed enlargement, dated June 20, 2012; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the height and bulk requirements of MDL § 171(2)(f) is appropriate, with certain conditions set forth below.

*Therefore it is Resolved,* that the decision of the Manhattan Borough Commissioner, dated May 10, 2011, is

modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, “Received January 11, 2012” - five (5) sheets and “July 3, 2012” - one (1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2012.

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## 146-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Gayle & Paul Degrazia, lessees.  
SUBJECT – Application May 8, 2012 – Proposed alteration and enlargement of an existing single family dwelling not fronting a mapped street, contrary to Section 36 of the General City Law, and the proposed upgrade of the existing non-conforming private disposal system partially in the bed of the service road, contrary to Building Department policy. R4 zoning district.

PREMISES AFFECTED – 15 Beach 220<sup>th</sup> Street, east side of Beach 220<sup>th</sup> Street, 168.5’ north of 4<sup>th</sup> Avenue, Block 16350, Lot p/o400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 30, 2012, acting on Department of Buildings Application No. 420543941, reads in pertinent part:

- A1-The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.
- A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law; and
  - Existing dwelling to be altered does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

# MINUTES

A2- The proposed upgrade of the private disposal system is contrary to the Department of Building policy; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated July 19, 2012 the Fire Department states that it has no objection to the subject proposal, and that the plans shall state that the building will be fully sprinklered; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated April 30, 2012, acting on Department of Buildings Application No. 420543941, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received May 8, 2012 -one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2012.

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## **80-11-A, 84-11-A, 85-11-A & 103-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 331, 333, 335, 329 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 46, 45, 44, 47, Borough of Manhattan.

### **COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: Sara Romanosky of East Village Commission Coalition and Kevin Shea.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## **46-12-A**

APPLICANT – Eric Palatnik, P.C., for Tremont Three, LLC, owner.

SUBJECT – Application March 1, 2012 – Application to permit a mixed use development located partially within the bed of a mapped but unbuilt street (East Tremont Avenue), contrary to General City Law Section 35. C4-5X/R7X zoning district

PREMISES AFFECTED – 4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues, Block 3027, Lot 1, Borough of Bronx.

### **COMMUNITY BOARD #6BX**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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## **172-11-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Folarunso Ovalabu, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking determination that the owner of the property has acquired a common law vested right to complete construction under the prior R3-2 zoning. R3A zoning district.

PREMISES AFFECTED – 119-43 197<sup>th</sup> Street, south of intersection of east side of 197<sup>th</sup> Street and south side of 119<sup>th</sup> Avenue, Block 12653, Lot 42, Borough of Queens.

### **COMMUNITY BOARD #12Q**

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## **21-12-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

# MINUTES

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

Adjourned: 12:00 P.M.

**REGULAR MEETING  
TUESDAY AFTERNOON, AUGUST 14, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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**ZONING CALENDAR**

**193-11-BZ  
CEQR #12-BSA-054K**

APPLICANT – Eric Palatnik, P.C., for Aleksandr Falikman, owner.

SUBJECT – Application December 21, 2011 – Special Permit (§73-622) for an enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 215 Exeter Street, Oriental Boulevard and Esplanade, Block 8743, Lot 42, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 8, 2011, acting on Department of Buildings Application No. 320364146, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.

2. Proposed plans are contrary to ZR 23-141(b) in that the proposed open space is less than the required 65%.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum required 35%.
4. Proposed plans are contrary to ZR 23-47 in that the proposed existing rear yard is less than 30'-0".
5. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 27, 2012 after due notice by publication in *The City Record*, with continued hearings on May 1, 2012, June 5, 2012, July 10, 2012, and July 24, 2012, and then to decision on August 14, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Exeter Street, between Oriental Boulevard and Esplanade, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 8,000 sq. ft., and is occupied by a single-family home with a floor area of 2,511 sq. ft. (0.31 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 2,511 sq. ft. (0.31 FAR) to 7,530 sq. ft. (0.94 FAR); the maximum permitted floor area is 4,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide 4,858 sq. ft. of open space (5,200 sq. ft. of open space is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 39 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-7" (a side yard with a minimum width of 5'-0" is required); and

WHEREAS, the applicant proposes to maintain the existing rear yard with a depth of 19'-10½" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant initially proposed to construct a home with a floor area of 7,849 sq. ft. (0.98 FAR), 4,716 sq. ft. of open space, and a lot coverage of 41

# MINUTES

percent; and

WHEREAS, in response to concerns raised by the Board as to the size of the proposed home, the applicant submitted revised plans for the current proposal, which reflects a reduction in the floor area and lot coverage and an increase in the amount of open space; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a survey of homes within the surrounding area, which reflected that there are 76 homes within a one-quarter mile radius of the site with an FAR greater than 0.8; and

WHEREAS, at the direction of the Board, the applicant narrowed the scope of its survey to include only those homes which exceed 7,000 sq. ft. in floor area and to exclude those homes that are subject to a Stop Work Order or do not have a valid certificate of occupancy; as a result, the survey submitted by the applicant reflects that there are seven homes within a one-quarter mile radius of the site with floor areas that exceed 7,000 sq. ft., and which range in FAR from 0.87 to 1.98; and

WHEREAS, the survey further indicates that of the seven homes with floor areas in excess of 7,000 sq. ft., five of the homes are larger than the proposed home in terms of floor area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 17, 2012"-(11) sheets and "July 30, 2012"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 7,530 sq. ft. (0.94

FAR); 4,858 sq. ft. of open space; lot coverage of 39 percent; a side yard with a minimum width 4'-7" along the northern lot line; and a rear yard with a minimum depth of 19'-10½", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2012.

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**70-12-BZ  
CEQR #12-BSA-102M**

APPLICANT – Francis R. Angelino, Esq., for C.S. Edward Kang, owner; Aqua Studio NY LLC, lessee.

SUBJECT – Application March 23, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Aqua Studio NY LLC*). C6-2A zoning districts.

PREMISES AFFECTED – 78 Franklin Street, between Broadway and Church Street, Block 175, Lot 4, Borough of Manhattan.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Francis R. Angelino

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 2, 2012, acting on Department of Buildings Application No. 120969087, reads in pertinent part:

Proposed Physical Culture Establishment at the subcellar, cellar, and first (1) floors is not permitted as-of-right in a C6-2A zoning district and it is contrary to ZR 33-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-2A zoning district within the Tribeca East Historic District, the



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operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and ground floor of a five-story mixed-use building, contrary to ZR § 33-10; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 24, 2012, and then to decision on August 14, 2012; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, residents from the adjacent buildings (76 and 80 Franklin Street) provided testimony in opposition to this application (the "Opposition"), citing the following primary concerns: (1) noise related to proposed mechanical systems servicing the PCE; (2) impacts on the structural integrity of the adjacent party walls resulting from the proposed demolition within the PCE space and/or potential leakage of water from the proposed pool; and (3) additional concerns regarding existing filings and approvals at the Department of Buildings ("DOB"); and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on Franklin Street between Broadway and Church Street, in a C6-2A zoning district within the Tribeca East Historic District; and

WHEREAS, the site has approximately 25 feet of frontage on Franklin Street, a depth of 100 feet, and a total lot area of 2,508 sq. ft.; and

WHEREAS, the proposed PCE will occupy 1,750 sq. ft. of floor area on a portion of the first floor, with an additional 2,375 sq. ft. of floor space located in portions of the cellar and sub-cellar; and

WHEREAS, the PCE will be operated as Aqua Fitness; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 7:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 9:00 a.m. to 8:00 p.m.; and

WHEREAS, in response to the noise concerns raised by the Opposition, the applicant states that the proposed DOB-approved air compressor unit for the subject PCE will be installed at the sub-cellar level in the rear yard of the PCE and therefore is physically separate from the adjacent residential units; and

WHEREAS, the applicant further states that the proposed PCE will minimize sound transmission to residential units in the two adjacent buildings at 76 Franklin Street and 80 Franklin Street and to the subject building's second floor residential units as follows: (1) the PCE will comply with the NYC Noise Code; (2) the pool area, where music will be played, is separated from the residential units on the second floor by one floor level (street level) where the PCE's lobby will be located; (3) the existing party walls

at the sub-cellar level where the pool is located and the cellar level, will be lined with sound-attenuating wallboard to reduce potential sound transmission to adjoining properties; (4) the stereo system in the pool, intended for local music during the exercise session, will be of a small scale and its speakers will be ceiling-mounted and located a minimum of four feet from any perimeter wall to further isolate sound from any residential units above or adjacent to the PCE space; and (5) the stair connecting the pool area to the street level will have a ceiling six feet below the ceiling of the first floor to further isolate any sound transmission to the residential units above; and

WHEREAS, in response to the Opposition's concerns regarding the structural integrity of the adjacent party walls resulting from demolition and potential leakage of the pool, the applicant represents that the structural engineer has examined the PCE's pool space for structural integrity, that the pool liner and panels will be designed to easily contain the water pressure of the pool, that the pool will be a minimum of 5'-0" from any party or perimeter walls and will be structurally independent of such walls; and that the pool will, as required, will be reviewed and approved by the Department of Health; and

WHEREAS, the Board notes that the applicant is required to follow all codes regarding construction and must obtain any necessary approvals from the relevant agencies; and

WHEREAS, the Board further notes that the neighbor's concerns regarding existing approvals by DOB are outside the purview of the Board's proceedings; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property, which is located within the Tribeca East Historic District; and

WHEREAS, the Landmarks Preservation Commission issued a Certificate of Appropriateness on July 10, 2012 approving of the proposed work for the subject PCE; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

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WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.12; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA102M, dated March 6, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C6-2A zoning district within the Tribeca East Historic District, the operation of a PCE at portions of the sub-cellar, cellar, and ground floor of a five-story mixed-use building, contrary to ZR § 33-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 7, 2012"-Five (5) sheets, and *on further condition*:

THAT the term of this grant will expire on August 14, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the sound attenuation measures shall be provided as indicated on the BSA-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2012.

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## **87-12-BZ CEQR #12-BSA-115K**

APPLICANT – Troutman Sanders, LLP, for A & J Properties, LLC, owner; Bally’s Total Fitness of Greater New York, lessee.

SUBJECT – Application April 11, 2012 – Special Permit (§73-36) to permit the continued operation of the existing physical culture establishment (*Bally Total Fitness*). C2-2/R4 zoning district.

PREMISES AFFECTED – 1720-28 Sheepshead Bay Road, 123.21’ south of the intersection of Vorhies Avenue, Block 8770, Lot 12, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Jeremiah Candreva.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 27, 2012, acting on Department of Buildings Application No. 320497459, reads in pertinent part:

The existing physical culture establishment (PCE) expired on May 5, 2007. Consequently, seek and obtain from the NYC Board of Standards and Appeals a new special permit, pursuant to Sections 73-36 of the Zoning Resolution of the City of New York, to permit the continuation of the existing PCE at this Site; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C2-2 (R4) zoning district, the operation of a physical culture establishment (PCE) on the first floor, second floor and mezzanine level of an existing two-story and mezzanine commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication

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# MINUTES

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in *The City Record*, and then to decision on August 14, 2012; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located on Sheepshead Bay Road, approximately 123 feet south of its intersection with Voorhies Avenue; and

WHEREAS, the site has approximately 109 feet of frontage on Sheepshead Bay Road, 116 feet of frontage on Shore Parkway, and a total lot area of 24,162 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1977 when, under BSA Cal. No. 854-76-BZ, the Board granted a variance under ZR § 72-21 to permit an enlargement to the existing building and its conversion to a skating rink (Use Group 12) with accessory uses; and

WHEREAS, on May 5, 1987, under BSA Cal. No. 830-86-BZ, the Board granted a variance under ZR § 72-21 and a special permit under ZR §73-36 to permit the change of use from a skating rink to a PCE, and the enlargement of the existing building to permit construction of a second floor and mezzanine, for a term of ten years; and

WHEREAS, on September 21, 1999, the Board granted an extension of the term for an additional ten years, which expired on May 5, 2007; and

WHEREAS, because the previous special permit expired on May 5, 2007, the applicant now seeks a new special permit for the PCE under ZR § 73-36; and

WHEREAS, the proposed PCE will occupy 37,363 sq. ft. of floor area on the first floor, second floor and mezzanine level; and

WHEREAS, the PCE will be operated as Bally's Total Fitness; and

WHEREAS, the applicant states that the hours of operation for the PCE will be: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 7:00 a.m. to 10:00 p.m.; Saturday, from 7:00 a.m. to 10:00 p.m.; and Sunday, from 9:00 a.m. to 5:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board questioned whether the existing signage is in compliance with the underlying C2 zoning district regulations, specifically related to the location and height of some of the signs; and

WHEREAS, in response, the applicant provided photographs dating back to 1976 and 1985 indicating painted signs that exceed the height permitted in the C2 district, and further requested that the Board allow them to review the grandfathered status of the existing signs with the Department of Buildings ("DOB"); and

WHEREAS, the Board notes certain existing signs exceed the permitted height and are subject to review and approval by DOB as to whether the signs qualify as legal nonconforming signs; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA115K, dated April 4, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit on a site located in a C2-2 (R4) zoning district, the operation of a PCE on the first floor, second floor, and mezzanine level of an existing two-story and mezzanine commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 26, 2012" – Four (4) sheets and "Received August 9, 2012" – Three (3) sheets and *on further condition*:

THAT the term of this grant will expire on August 14,

# MINUTES

2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the Department of Buildings will review the legality of the PCE's existing signage;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 14, 2012.

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## 147-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for continued hearing.

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## 165-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 10-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.

SUBJECT – Application January 18, 2012– Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling, contrary to front yard (§23-45) and side yard (§23-461) regulations. R5 zoning district.

PREMISES AFFECTED – 114-01 95<sup>th</sup> Avenue, northeast corner of 95<sup>th</sup> Avenue and 114<sup>th</sup> Street, Block 9400, Lot 37, Borough of Queens.

## COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for continued hearing.

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## 65-12-BZ

APPLICANT – Lewis E. Garfinkel, for Yisroel Brodt, owner.

SUBJECT – Application March 20, 2012 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1140 East 28<sup>th</sup> Street, west side of East 28<sup>th</sup> Street, 313' south of Avenue K, Block 7627, Lot 62, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 66-12-BZ

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to permit a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations. R7A,R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121<sup>st</sup> Street and W. 122<sup>nd</sup> Street, Block 1948, Lot 30, 35, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Frank Chaney and Jack Freeman.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for continued hearing.

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## 73-12-BZ

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41<sup>st</sup> Avenue and 42<sup>nd</sup> Avenue, Block 6290, Lot 5, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey Chester.

For Opposition: Regina A. Matejka and Stanley Matejka.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for continued hearing.

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## 80-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts.

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Mr. Rizzo, Jeanette Bozzo, Anne Bevis Detivihi and Franci Blassberg.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for continued hearing.

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## 104-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for adjourned hearing.

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## 160-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CP Associaes LLC c/o Jeffrey Mgmt., owner; Blink 820 Concourse Inc., lessee.

SUBJECT – Application May 25, 2012 – Special Permit to allow a physical culture establishment (*Blink*) within existing commercial building. C8-3 zoning district.

PREMISES AFFECTED – 820 Concourse Village West, east side of Concourse Village West, 312.29' south of intersection of Concourse Village West and East 161<sup>st</sup> Street, Block 2443, Lot 91, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 163-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30<sup>th</sup> Street, East 34<sup>th</sup> Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30<sup>th</sup> Street and First Avenue, Block 962, Lot 80, 108,

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# MINUTES

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1001-1107, Borough of Manhattan.

**COMMUNITY BOARD #6M**

APPEARANCES –

For Applicant: Elise Wagner, Lois Mate and Claudia Gorun.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
September 25, 2012, at 1:30 P.M., for decision, hearing  
closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 97, No. 35

August 29, 2012

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### DIRECTORY

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# DOCKET

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New Case Filed Up to August 21, 2012  
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**252-12-BZ**

39-29 223rd Street, Mia Drive between 223rd Street & Cross Island Parkway, Block 36343, Lot(s) 154-157, Borough of **Queens, Community Board: 11**. Variance (§72-21) to legalize a non-complying rear yard which is improved with four single family homes. The existing rear yard does not comply with the zoning requirements of §23-47. R1-2 zoning district R1-2 district.

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**253-12-BZ**

535 West 159th Street, Block 2118, Lot(s) 52, Borough of **Manhattan, Community Board: 12**. Variance (§72-21) to permit the legalization of an existing open parking lot. R7-2 zoning district. R7-2 district.

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**254-12-BZ**

850 Third Avenue, bounded by Third Avenue, unmapped 30th Street, Second Avenue, and unmapped 31st Street., Block 671, Lot(s) 1, Borough of **Brooklyn, Community Board: 7**. Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations. M3-1 zoning district. M3-1 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**SEPTEMBER 25, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 25, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**724-56-BZ**

APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.

SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42nd Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**30-58-BZ**

APPLICANT – Vassalotti Associates Architects, LLP for Maximum Properties, Inc., owner; Joseph Macchia, lessee.

SUBJECT – Application July 10, 2012 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B). C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, north west corner of 185<sup>th</sup> Street. Block 7067, Lot 50, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**173-99-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.

SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Matrix Fitness Club) which expired on March 6, 2011; Amendment for an increase in floor area (2,635.72 square feet) to the existing PCE at the cellar level; waiver of the rules. M-1 zoning district.

PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43<sup>rd</sup> Avenue, Block 782, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**134-06-BZ**

APPLICANT – Akerman Senterfill, LLP, for 241-15 Northern LLC, owner.

SUBJECT – Application August 13, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) which permitted the construction of a five story residential building containing 40 dwelling units and 63 accessory parking spaces which expires on September 9, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-15 Northern Boulevard, Northwest corner of the intersection between Northern Boulevard and Douglaston Parkway. Block 8092, Lot 39, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**APPEALS CALENDAR**

**45-03-A thru 62-03-A & 64-03-A**

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of single family homes not fronting on a legally mapped street contrary to Section 36 of the General City Law and also located within the bed of a mapped street contrary to Section 35 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**89-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposed construction of three two family and one, one family homes located within the bed of mapped street (Thornycroft Avenue) contrary to General City law Section 35.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**92-07-A thru 94-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposed construction of three two family and one, one family homes located within the bed of mapped street (Thornycroft Avenue) contrary to General City law Section 35.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester

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# CALENDAR

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Avenue, and Pacific Avenue, south of Saint Albans Place.  
Block 5238, Lots 13, 16, 17, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**95-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposed construction of three two family and one, one family homes located within the bed of mapped street (Thornecroft Avenue) contrary to General City law Section 35.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**144-12-A**

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal pursuant to MDL§310 to allow for enlargement to a five-story building, contrary to MDL§171(2)(f).

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #4M**  
-----

**145-12-A**

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission (“LPC”), prior to reinstatement and amendments of the permits. R8B zoning district.

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #4M**  
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**SEPTEMBER 25, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 25, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
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**ZONING CALENDAR**

**190-11-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations ZR §22-10. R7-1 zoning district.

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.

**COMMUNITY BOARD #3BX**  
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**137-12-BZ**

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear-yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133). M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73<sup>rd</sup> Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**  
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**152-12-BZ**

APPLICANT–Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a cellar and four-story mixed use building with commercial use on first floor and three dwelling units on upper floors on a vacant lot that does not provide a required side yard (3' proposed, 8' required). C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65' southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

**COMMUNITY BOARD #12Q**  
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# CALENDAR

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**193-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vornado Realty Trust, owner; Soul Cycle 384 Lafayette Street, LLC, lessee.

SUBJECT – Application June 14, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Soul Cycle*) within a portion of an existing building in an M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street (a/k/a 692 Broadway, 2/20 East 4<sup>th</sup> Street) southwest corner of intersection of Lafayette Street and E. 4<sup>th</sup> Street, Block 531, Lot 7401, Borough of Manhattan.

**COMMUNITY BOARD #4BK**

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**202-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1030 Southern Boulevard Realty Associates, owner; Blink Southern Boulevard, Inc., lessee.

SUBJECT – Application June 26, 2012 – Application for Special Permits (§73-36 and §73-52) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building and corresponding extension of the physical culture establishment use 25' into an R7-1 zoning district.

PREMISES AFFECTED – 1030 Southern Boulevard, east side of Southern Boulevard, 264' south of intersection of Westchester Avenue and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

**COMMUNITY BOARD #4BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, AUGUST 21, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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**SPECIAL ORDER CALENDAR**

**718-56-BZ**

APPLICANT – Walter T. Gorman, P.E., for 741 Forest Service Corp., owner; Avi Diner, lessee.

SUBJECT – Application April 10, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which will expire on July 2, 2012. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 741 Forest Avenue, northwest corner North Burgher Avenue, Block 183, Lot 52, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**APPEARANCES –**

For Applicant: Zaheer Khanzada.

**ACTION OF THE BOARD –** Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION –**

WHEREAS, this is an application for a reopening and an extension of term for the continued use of a gasoline service station, which expired on July 2, 2012; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 7, 2012, and then to decision on August 21, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Forest Avenue and North Burgher Avenue, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 2, 1957 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on July 15, 2008, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on July 2, 2012, an extension of time to obtain a certificate of occupancy, and an amendment to legalize the conversion of one restroom to office space and office/sales space to an accessory convenience store; and

WHEREAS, the applicant now requests an additional ten year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks to legalize minor modifications to the site, including the installation of an above ground waste oil tank on a 6'-0" by 6'-0" concrete pad at the northwest corner of the site, and a reduction in the number of required parking spaces from eight to seven due to the placement of the above ground oil tank on the site; and

WHEREAS, at hearing, the Board raised concerns regarding the status of a disabled truck located at the northwest portion of the site and the outdoor storage of tires at the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the disabled truck has been removed from the site and the tires have been removed from the exterior of the building; the applicant states that tire storage will only take place inside the service building; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and modifications to the approved plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 2, 1957, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 2, 2012, to expire on July 2, 2022; and to permit certain site modifications; *on condition* that all use and operations shall substantially conform drawings filed with this application marked 'Received April 10, 2012'-(6) sheets; and *on further condition*:

THAT the term of the grant will expire on July 2, 2022;

THAT the above condition will be listed on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 520092499)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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# MINUTES

## 69-91-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The 61 West 62<sup>nd</sup> Street Condominium, owner; TSI Lincoln LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on November 26, 2012; an Amendment for a decrease in floor area; Waiver of the Rules. C4-7 (L) zoning district.

PREMISES AFFECTED – 49-61 West 62<sup>nd</sup> Street, northeasterly corner of West 62<sup>nd</sup> Street and Columbus Avenue, Block 1115, Lot 7502, Borough of Manhattan.

## COMMUNITY BOARD #7M

### APPEARANCES –

For Applicant: Fredrick A. Becker.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on November 26, 2011, and an amendment to reflect a decrease in the floor space occupied by the PCE; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the northeast corner of Columbus Avenue and West 62<sup>nd</sup> Street, within a C4-7 zoning district; and

WHEREAS, the site is occupied by a 26-story mixed-use building; and

WHEREAS, the PCE occupies 3,915 sq. ft. of floor area at portions of the first and second floor, with an additional 18,365 sq. ft. of floor space located at portions of the cellar and sub-cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1991 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on November 26, 2001; and

WHEREAS, most recently, on December 9, 2003, the Board granted a ten-year extension of time, to expire on November 26, 2011; and

WHEREAS, the applicant now seeks to extend the term

of the special permit for ten years; and

WHEREAS, the applicant also seeks an amendment to permit a reduction in the total amount of floor space occupied by the PCE; and

WHEREAS, specifically, the applicant seeks to eliminate the 2,582 sq. ft. of existing PCE use at the second floor, reduce the PCE's floor area at the first floor from 1,333 sq. ft. to 608 sq. ft., and increase the PCE's floor space at the cellar level from 8,843 sq. ft. to 10,469 sq. ft.; the PCE will continue to occupy the 9,522 sq. ft. of floor space at the sub-cellar level; and

WHEREAS, the applicant states that the proposed amendment will reduce the floor area occupied by the PCE from 3,915 sq. ft. to 608 sq. ft., and will reduce the total floor space occupied by the PCE from 22,280 sq. ft. to 20,599 sq. ft.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previous grant are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 26, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from November 26, 2011, to expire on November 26, 2021, and to permit the noted modifications to the previously-approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received April 11, 2012' - (5) sheets; and *on further condition*:

THAT the term of this grant will expire on November 26, 2021;

THAT there will be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 120945317)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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# MINUTES

## 71-93-BZ

APPLICANT – Paul F. Bonfilio, for Vincenzo Farruggio, owner.

SUBJECT – Application January 23, 2012 – Amendment of a variance (§72-21) to allow a 243 sq. ft. addition to an existing house, contrary to front yard (§23-45(a); floor area and lot coverage (§23-141(b)) requirements. R2A zoning district.

PREMISES AFFECTED – 153-01 Bayside Avenue, 308.25' west of 154<sup>th</sup> Street, between 29<sup>th</sup> Avenue and Bayside Avenue, Block 4835, Lot 25, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Paul F. Bonfilio.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this application is a request for a re-opening and an amendment to a previously granted variance, to permit the enlargement of a single-family home which does not comply with the underlying zoning requirements for floor area, lot coverage, and front yards, contrary to ZR §§ 23-141 and 23-45(b); and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the subject site is an irregularly shaped corner though lot, with frontage on Bayside Avenue, 29<sup>th</sup> Avenue, and 154<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the lot is trapezoidal-shaped, with four frontages, a length ranging from 299.59 feet to 308.25 feet, a depth ranging from 14.28 feet to 41.61 feet, and a total lot area of 7,459 sq. ft.; and

WHEREAS, on February 1, 1994, the Board granted a variance under ZR § 72-21, to permit the construction of a single-family home on the west side of the lot that did not provide the requisite two front yards; and

WHEREAS, subsequently, on August 19, 2005, the Board issued a letter of no objection for an amendment which allowed for the subdivision of the lot into two tax lots; and

WHEREAS, most recently, on July 11, 2006, the Board granted an amendment to permit the construction of a second two-story single-family home on the second tax lot, lot 27, which did not comply with the front yard requirement; the original two-story single-family home is located on tax lot 25; and

WHEREAS, the applicant now proposes to construct a 242.6 sq. ft. one-story horizontal enlargement on the eastern side of the original home on lot 25; and

WHEREAS, the applicant states that the proposed enlargement will result in the following non-complying parameters: a total floor area for the site of 3,872.6 sq. ft. (0.52 FAR) (the maximum permitted floor area is 3,729.5 sq. ft. (0.50 FAR)); lot coverage of 31.5 percent (the maximum permitted lot coverage is 30 percent); a front yard along the Bayside Avenue frontage of the enlargement ranging in depth from 7'-6" to 10'-0", and a front yard along the 29<sup>th</sup> Avenue frontage with a depth of 10'-0" (two front yards with a minimum depth of 15'-0" each are required); and

WHEREAS, the applicant states that the narrow, irregular shape of the lot compromises the construction of a complying enlargement; and

WHEREAS, specifically, the applicant states that an enlargement with complying front yards would be limited to a maximum width of five feet where the enlargement joins the existing house, and a maximum width of only two feet at the eastern end of the enlargement; and

WHEREAS, the applicant notes that the site was rezoned from an R2 district to an R2A district on April 1, 2009; and

WHEREAS, the applicant represents that the proposed enlargement would have complied with the floor area regulations under the prior R2 district; however, because attic space above a height of five feet and accessory parking above 300 sq. ft. is calculated as floor area under the R2A district regulations, the rezoning resulted in an approximately 144 sq. ft. increase in the floor area, leaving only 99.5 sq. ft. of floor area left on the site for a complying enlargement; and

WHEREAS, the applicant submitted an analysis of the homes within the surrounding area which reflects that at least 22 of the homes on the five surrounding blocks have FARs greater than 0.50; and

WHEREAS, the analysis submitted by the applicant further reflects that the five homes surveyed on the subject block have FARs ranging between 0.67 and 1.11; and

WHEREAS, the applicant represents that there is approximately 5,245 sq. ft. of City-owned land between the property line and the sidewalk, which creates a perimeter that enhances the perception of open space on the lot and results in a perceived depth of the front yards on Bayside Avenue of approximately 15 to 17 feet; and

WHEREAS, based upon the above, the Board concludes that the proposed enlargement does not affect the prior findings that the site is compatible with the neighborhood character and that the relief granted was the minimum necessary; and

WHEREAS, based upon the above, the Board finds it appropriate to approve the proposed amendment.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on February 1, 1994, so that as amended this portion of the resolution shall read: "to permit the enlargement of the existing home on lot 25, which does not comply with the zoning requirements for floor area, lot coverage, or front yards; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received January 23, 2012'-(2) sheets and 'July 2, 2012'-(2) sheets; and *on further condition*:

THAT the zoning lot will be limited to a total floor area

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of 3,872.6 sq. ft. (0.52 FAR), and a lot coverage of 31.5 percent, as illustrated on the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the Department of Buildings shall review compliance with all applicable light and air requirements;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 420328336)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagudayev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application December 21, 2011 – Amendment to previously approved variance (§72-21) for a synagogue. Amendment would allow increased non-compliance in building height (§24-521), floor area (§24-11) and lot coverage (§24-11) regulations. R4 zoning district.

PREMISES AFFECTED – 147-58 77<sup>th</sup> Road, 150<sup>th</sup> Street and 77<sup>th</sup> Road, Block 6688, Lot 31, Borough of Queens.

## COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, and an amendment to permit an increase in the proposed building height and floor area, and the addition of an elevator lift; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in *The City Record*, with continued hearings on June 5, 2012, July 10, 2012, and August 7, 2012, and then to decision on August 21, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommended disapproval of the original iteration of this application, citing concerns with the proposed height of 53’-0”; and

WHEREAS, New York City Council Member James F. Gennaro recommends approval of this application; and

WHEREAS, the applicant is brought on behalf of the Jewish Center of Kew Gardens Hills (the “Jewish Center”), a non-profit religious entity; and

WHEREAS, the subject site is located on the southwest corner of 77<sup>th</sup> Road and 150<sup>th</sup> Street, within an R4 zoning district; and

WHEREAS, the subject lot has a width of 40 feet, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 23, 2011 when, under the subject calendar number, the Board granted a variance to permit the construction of a three-story building to be occupied by a synagogue (Use Group 4), religious school, and Rabbi’s apartment which does not comply with the underlying zoning district regulations for lot coverage, height and setback, front yard, side yards, side setback, and parking for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34 and 24-35, 24-551 and 25-31; and

WHEREAS, the applicant now seeks an amendment to permit an increase in the proposed building height and floor area, and the addition of an elevator lift; and

WHEREAS, specifically, the applicant proposes to increase the total floor area of the building from 7,998 sq. ft. (1.99 FAR) to 10,972 sq. ft. (2.74 FAR) (the maximum permitted total floor area is 11,000 sq. ft. (2.75 FAR), including a community facility floor area of 9,005 sq. ft. (2.25 FAR) (the maximum permitted community facility floor area is 8,000 sq. ft. (2.0 FAR)) and a residential floor area of 1,967 sq. ft. (0.49 FAR) (the maximum permitted residential floor area is 3,000 sq. ft. (0.75 FAR)); the applicant also proposes to increase the total building height from 40’-6” to 48’-0” (the maximum permitted building height is 35’-0”); and

WHEREAS, the applicant also proposes to install an elevator lift at the 77<sup>th</sup> Road side of the building in order to provide handicap access; and

WHEREAS, the applicant states that the proposed increase in FAR and height are necessary due to a high water table and poor soil conditions on the site which were discovered subsequent to the Board’s initial grant; and

WHEREAS, the applicant states that soil boring tests which were conducted after the previous approval revealed that the water table has depths ranging from 8’-6” to 10’-0” which is too high to allow for the previously proposed cellar space below grade; and

WHEREAS, in addition to the high water table, the applicant states that the soil is mostly composed of silt, sand, and other uncontrolled fill material which, combined with the high water table creates extensive difficulties for building below grade; and

WHEREAS, the applicant states that, as a result of the soil conditions the building must be raised in order to meet the programmatic needs of the Jewish Center, such that the overall building height increases and the approved cellar becomes a basement, which counts towards floor area; and

WHEREAS, the applicant originally proposed to increase the height of the proposed building to 53’-0”; however, at the direction of the Board and in response to concerns raised by the Community Board, the applicant submitted revised plans



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reflecting the reduction of the total height to 48'-0"; and

WHEREAS, the applicant notes that the Community Board previously approved an application to construct the subject building at a proposed height of 44'-0", only four feet lower than the current proposal; and

WHEREAS, the applicant states that the floor-to-ceiling heights have been reduced to the minimum height and therefore the total building height cannot be further reduced; and

WHEREAS, at hearing, the Board questioned why the total building height could not be further reduced by sinking the foundations of the building from approximately 4'-0" below grade to 8'-0" below grade; and

WHEREAS, in response, the applicant submitted a cost estimate from the contractor indicating that the incremental cost of lowering the foundations of the building to 8'-0" would be approximately \$245,000; and

WHEREAS, the applicant also submitted a letter from the engineer stating that the bottom of the elevator joist is approximately seven to eight feet below grade, and in order to keep the building's elevator pit protected against long term damage due to the water table which ranges from 8'-6" to 10'-0", the elevator pit should be constructed above the water table; and

WHEREAS, the applicant submitted a cost estimate from the contractor indicating that the cost of lowering and waterproofing the elevator pit is approximately \$490,000, and the applicant represents that there would still be a risk that the water would penetrate the elevator pit and damage the overall structure of the building even after undergoing such a significant cost; and

WHEREAS, the applicant states that the proposed amendments will not affect the footprint of the proposed building, which will be identical to that of the previous approval; and

WHEREAS, the applicant notes that raising the building will eliminate the cellar, instead creating a basement that will be able to hold 38 less people than the previously proposed cellar because the basement will match the footprint of the first floor, while the previously proposed cellar level was able to extend beyond the footprint of the first floor; accordingly, although the floor area of the building will increase from 7,998 sq. ft. to 10,972 sq. ft., the total amount of proposed floor space in the building will actually be decreased from 11,998 sq. ft. to 10,972 sq. ft.; and

WHEREAS, the applicant also submitted a building study which indicates that other buildings along 150<sup>th</sup> Street range from three stories to seven stories, and identifies at least five buildings along 150<sup>th</sup> Street which have a height of more than 50 feet; and

WHEREAS, accordingly, the applicant represents that the proposed four-story building with a height of 48'-0" will not alter the essential character of the surrounding neighborhood; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and

Appeals *reopens* and *amends* the resolution, dated August 23, 2011, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received June 25, 2012'- (11) sheets and *on further condition*:

THAT the building parameters will be: a total floor area of 10,972 sq. ft. (2.74 FAR); a community facility floor area of 9,005 sq. ft. (2.25 FAR); a residential floor area of 1,967 sq. ft. (0.49 FAR); and a total height of 48'-0", as illustrated on the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 402161247)

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## **311-71-BZ**

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

## **COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for adjourned hearing.

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## **301-85-BZ**

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment of a variance (§72-21) which permitted limited retail use in the ground floor and cellar retail within a five story and penthouse residential building. The amendment seeks to expand the uses conditioned by the Board to include other retail (UG 6) uses. R10 (PI) zoning district.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

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## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Francis R. Angelino.

For Opposition: Robert Leighton, Jennifer Ryan and Lo Van der Valk.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for decision, hearing closed.

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## 336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on June 8, 2011. C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

### APPEARANCES –

For Applicant: Eric Palatnik.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for decision, hearing closed.

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## 302-01-BZ

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

## COMMUNITY BOARD #3BX

### APPEARANCES –

For Applicant: Randall Minor.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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## 189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233<sup>rd</sup> Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expired on October 21, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233<sup>rd</sup> Street, southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

## COMMUNITY BOARD #12BX

### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C., for Bway-129 St. Gasoline Corp., owner.

SUBJECT – Application December 5, 2011 – Extension of Term (§11-411) of a previously granted variance which permitted the construction and maintenance of an automotive service station (UG 16B) with accessory uses which expired on June 3, 2010; Waiver of the Rules. R6/C1-2 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, southwest corner of Parsons Boulevard, Block 5012, Lot 45, Borough of Queens.

## COMMUNITY BOARD #7Q

### APPEARANCES –

For Applicant: Eric Palatnik.

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

## 155-11-A

APPLICANT – Sheldon Lobel, P.C., for 10 Stratford Associates, owners.

SUBJECT – Application October 3, 2011 – Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning district regulations. R3X zoning district.

PREMISES AFFECTED – 480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester and Ditmas Avenue, Block 5174, Lot 16,

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Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES – None.

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-story mixed-use community facility/residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on August 21, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommends disapproval of this application, citing the following primary concerns: (1) the Department of Buildings (“DOB”) has not established that the permit is valid as the proposed plans do not comply with the prior zoning district parameters; (2) the applicant is a contract vendee and not the owner of the property and therefore lacks standing; (3) the proposed parking plan is not financially feasible; and (4) the proposed building is out of character with the surrounding neighborhood; and

WHEREAS, New York State Assembly Member James F. Brennan submitted written testimony requesting that DOB review the project to determine whether the plans comply with the prior zoning district regulations prior to any approval by the Board; and

WHEREAS, representatives of Ditmas Park West (the “Opposition”) provided oral and written testimony in opposition to this application, reiterating the concerns raised by the Community Board and raising the additional concern that the owner acted in bad faith by failing to provide a security fence while construction was stalled on the site; and

WHEREAS, the subject site is located on a through lot bounded by Stratford Road to the east and Coney Island Avenue to the west, between Dorchester Road and Ditmas Avenue, within an R3X zoning district; and

WHEREAS, the site has approximately 40 feet of frontage on Stratford Road and Coney Island Avenue, a depth ranging from 106 feet to 109 feet, and a total lot area of 4,302 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use community facility/residential building with a floor area of 16,193 sq. ft. (3.76 FAR) (the “Building”); and

WHEREAS, the subject site is currently located within an R3X zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters, specifically with respect to floor area ratio (“FAR”) and density; and

WHEREAS, however, on July 29, 2009 (the “Rezoning Date”), the City Council voted to adopt the Flatbush Rezoning, which rezoned the site to R3X, as noted above; and

WHEREAS, the Building does not comply with the R3X zoning district parameters as to FAR and density; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the Board notes that New Building Permit No. 302228346-01-NB was issued on May 3, 2007 (the “New Building Permit”), authorizing the development of the proposed seven-story mixed-use community facility/residential building pursuant to R6 zoning district regulations; and

WHEREAS, the Board notes that, as of the Rezoning Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a Rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permit pursuant to ZR § 11-332 within 30 days of their lapse on July 29, 2011, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letters dated March 6, 2012 and July 10, 2012, DOB stated that it issued a letter of intent to revoke the permit after an audit revealed that the application documents propose an amount of floor area that exceeds the maximum FAR allowed in the district, but that it was a minor and curable error in a lawfully issued permit; and

WHEREAS, at the direction of the Board, and in response to concerns raised by the Community Board, State Assembly Member, and the Opposition, the applicant met with DOB to review the plans for compliance with the R6 district regulations; and

WHEREAS, by letter dated August 6, 2012, DOB stated that the floor area objection has been resolved; and

WHEREAS, the applicant cites to GRA V. LLC v. Srinivasan, 12 N.Y.3d 863 (2009), for the proposition that minor plan errors may be corrected in the vested rights context

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in accordance with the prior zoning; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed the following: 100 percent of site preparation work; 100 percent of excavation; and 100 percent of the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction schedule, a foundation plan; and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed prior to the two year anniversary of the Rezoning Date; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the two year anniversary of the Rezoning Date, the owner expended \$212,315.16, including hard and soft costs and irrevocable commitments, out of \$2,149,917.29 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted copies of cancelled checks and accounting tables; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$162,390.16 for the work performed at the site as of the two year anniversary of the Rezoning Date; and

WHEREAS, the applicant further states that the owner paid an additional \$49,925 in soft costs related to the work performed at the site; and

WHEREAS, thus, the expenditures up to the two year anniversary of the Rezoning Date represent approximately ten percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, the site's floor area would have to be reduced from the proposed 16,193 sq. ft. (3.76 FAR) to a maximum of 2,151 sq. ft. (0.50 FAR), and the density would have to be reduced from the proposed mixed-use building with 18 units to a single- or two-family home; and

WHEREAS, the applicant represents that compliance with the R3X zoning district parameters would result in a reduction of the annual rental income for the site from approximately \$405,900 for the proposed building to approximately \$42,000 for the complying building, resulting in an annual loss of rental income of approximately \$363,900; and

WHEREAS, the applicant states that the side yard foundation walls, the interior parking ramp, and the cellar foundations constructed for the proposed R6 building would all be completely unusable for an R3X compliant building; as a result, none of the foundation costs expended would be recoverable for an R3X compliant building; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete

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construction of the Building had accrued to the owner of the premises as of the two year anniversary of the Rezoning Date.

WHEREAS, as to the Opposition's concerns regarding the applicant's lack of standing as a contract vendee, the applicant states that standing is appropriate for contract vendees, that the Board has granted many applications on behalf of contract vendees (citing BSA Cal. Nos. 124-05-BZ, 342-03-BZ and 402-01-BZ), and that the economic injury at issue in a vested rights case is one sustained by the property as a result of the zoning change; and

WHEREAS, the Board notes that its Rules of Practice and Procedure specifically authorize contract vendees to bring applications before the Board; and

WHEREAS, the Board further notes that a site's ownership is not a relevant element in the vested rights analysis, as a property owner succeeds to all the right, title and interest in the property held by its predecessor-in-interest and transferred to it (see Caponi v. Walsh, 228 A.D. 86 (2d Dep't 1930); see also Elsinore Prop. Owners Ass'n v. Morwand Homes; 52 A.D. 1105 (2d Dep't 1955)); and

WHEREAS, as to the Opposition's argument that the proposed building is out of context with the surrounding neighborhood, the applicant states, and the Board agrees, that findings related to neighborhood character are not part of the vested rights analysis; and

WHEREAS, as to the Opposition's claim that the proposed parking plan is not financially feasible, the applicant states that the parking plan has been reviewed and approved by DOB; and

WHEREAS, the Board notes that findings related to the financial feasibility of the project are also not part of the vested rights analysis; and

WHEREAS, in response to the Opposition's concerns that the applicant acted in bad faith by not providing a security fence while construction was stalled on the site, the applicant states that construction stalled on the site due to extenuating financial circumstances, and not bad faith on the part of the applicant, and that the actions taken by the Department of Housing Preservation and Development of backfilling the site to prevent injury and the pooling of water was common for many incomplete buildings throughout the surrounding area; and

WHEREAS, while the Board was not swayed by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the Flatbush Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, however, the Board finds that the applicant has met the test for a common law vested rights determination, and therefore has the right to continue construction on the site pursuant to the zoning regulations in place prior to the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 302228346-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of

occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 21, 2012.

## 155-12-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 511 Property LLC, owner.

SUBJECT – Application May 11, 2012 – Extension of time (§11-332) to complete construction of a minor development commenced prior to a zoning text amendment related to parking. C1-7(A) Special Hudson Zoning District.

PREMISES AFFECTED – 511 Ninth Avenue, southwest corner of Ninth Avenue and West 39<sup>th</sup> Street (block bounded by West 38<sup>th</sup> Street and 10<sup>th</sup> Avenue), Block 736, Lot 33, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Lisa Lee.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, the subject site is located on the southwest corner of Ninth Avenue and West 39<sup>th</sup> Street, in a C1-7A zoning district within Subarea D5 of the Hell's Kitchen Subdistrict of the Special Hudson Yards District; and

WHEREAS, the site has a total lot area of 22,732 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 12-story mixed-use residential/ commercial/community facility building (the "Building"); and

WHEREAS, the Building is proposed to have a floor area of 126,861 sq. ft. (5.58 FAR), with an accessory parking garage for 32 cars; and

WHEREAS, the Building complies with the former zoning parameters of the Special Hudson Yards District; and

WHEREAS, however, on April 14, 2010 (hereinafter, the "Enactment Date"), the City Council voted to enact the Hudson Yards Parking Text Amendment, which does not permit new parking spaces at the subject site unless there is a decrease in the number of parking spaces in Hudson Yards; and

WHEREAS, accordingly, the Building does not comply with the current zoning because the proposed accessory parking spaces are not permitted; and

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WHEREAS, on March 10, 2008, New Building Permit No. 104576246-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the proposed 12-story mixed-use building with an accessory parking garage for 32 cars; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall 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."; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such

requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated June 27, 2012, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of April 14, 2012 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the excavation, dewatering, concrete foundations, pits, basement walls and waterproofing, and construction of a portion of the required Con Edison vaults; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; applications and certifications for payments; accounting tables; and an affidavit from the construction manager; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$8,879,855, or 18 percent, out of the approximately \$50,369,810 cost to complete; and

WHEREAS, as noted above, the applicant has submitted applications and certifications for payments, accounting tables; and an affidavit from the construction manager; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to

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satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104576246-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 21, 2014

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 207-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Christopher Fairbairn, lessee.

SUBJECT – Application July 2, 2012 – Legalization of the reconstruction of a single family home not fronting on a legally mapped street, contrary to General City Law Section 36, and the proposed upgrade of an existing private disposal system, contrary to the Department of Buildings policy. R4 zoning district.

PREMISES AFFECTED – 164 Reid Avenue, west of Reid Avenue, south of Janet Lane, Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant:

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 25, 2012, acting on Department of Buildings Application No. 420579653, reads in pertinent part:

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.

a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law; and

b) Existing dwelling to be altered does not

have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A2- The proposed upgrade of the private disposal system is contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated July 19, 2012 the Fire Department states that Reid Avenue is a Fire Department access road of sub-standard width as per Fire Code Section 503.2.1, and therefore the installation of sprinklers is required throughout the entire building; and

WHEREAS, by letter dated July 25, 2012, the applicant states that sprinklers and interconnected smoke alarms hardwired to the existing electrical system will be installed at the site; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved that the decision of the Queens Borough Commissioner, dated June 25, 2012, acting on Department of Buildings Application No. 420579653, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received July 25, 2012 -one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested

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rights application which expired on May 12, 2007. R2A Zoning District.

PREMISES AFFECTED – 32-09 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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## 232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4<sup>th</sup> Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9<sup>th</sup> Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Caroline Harris.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 10 A.M., for adjourned hearing.

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## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings’ determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 10 A.M., for deferred decision.

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## 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Scaduto.

For Opposition: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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## 151-12-A

APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.

SUBJECT – Application May 9, 2012 – Appeal challenging the Department of Buildings’ determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district

PREMISES AFFECTED – 231 East 11<sup>th</sup> Street, north side of E. 11<sup>th</sup> Street, 215’ west of the intersection of Second Avenue and E. 11<sup>th</sup> Street, Block 467, Lot 46, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Christopher Slowik, Fred Hopengarten and Paul Issacs.

For Administration: John Egnatios-Beene.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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## 164-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Robert Hauck, lessee.

SUBJECT – Application June 11, 2012 – Proposed construction not fronting on a mapped street and within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R4 zoning district

PREMISES AFFECTED – 210 Oceanside Avenue, Block 16350, part of Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



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**REGULAR MEETING  
TUESDAY AFTERNOON, AUGUST 21, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**ZONING CALENDAR**

**105-12-BZ**

**CEQR #12-BSA-118X**

APPLICANT – Zaskorski & Notaro Architects, for Alan Mucatel, owner.

SUBJECT – Application April 17, 2012 – Variance (§72-21) to permit the installation of a new elevator within an existing school (*Katharine Dodge Brownell Preschool*), contrary to front yard (§24-33) and lot coverage (§24-11) regulations. R5 zoning district.

PREMISES AFFECTED – 450 Castle Hill Avenue, southeast corner of Castle Hill and Lacombe Avenues, Block 3511, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #9BX**

APPEARANCES –

For Applicant: Carlo Zaskorski.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 29, 2012, acting on Department of Buildings Application No. 220168618, reads, in pertinent part:

ZR 24-33 HPC elevator is not permitted obstruction in required front yard

ZR 24-11 Increase to non-compliant lot coverage not permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5 zoning district, the installation of an elevator in an existing building occupied by a school (UG 3), which does not comply with the zoning regulations for front yards or lot coverage, contrary to ZR §§ 24-33 and 24-11; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in the *City Record*, and then to decision on August 21, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, this application is brought on behalf of Leake and Watts Services, Inc. (“Leake and Watts”), a not-for-profit organization which provides services in child welfare, early childhood and special education, and for people with developmental disabilities; and

WHEREAS, the applicant is the parent company of the Katherine Dodge Brownell Pre-School (the “School”), which occupies the basement and first floor of the building, and Development Disabilities at Leake & Watts, which occupies the second floor; and

WHEREAS, the site is located on the northeast corner of Lacombe Avenue and Castle Hill Avenue, within an R5 zoning district; and

WHEREAS, the site has a rectangular shape with 108 feet of frontage on Lacombe Avenue, 100 feet of frontage on Castle Hill Avenue, and a total lot area of 10,833 sq. ft.; and

WHEREAS, the site is occupied by a three-story community facility building with 21,340 sq. ft. of floor area (1.97 FAR) (the “Building”); and

WHEREAS, the Building does not contain an elevator; and

WHEREAS, the applicant proposes to install an elevator to provide ADA access from the basement to the first, second and roof levels of the Building; and

WHEREAS, the applicant represents that the School is a permitted use in the underlying district; however, the proposed expansion requires a bulk variance because it does not comply with the front yard requirements and increases the degree of non-compliance with the lot coverage requirements; and

WHEREAS, specifically, the addition of the proposed elevator results in the following non-compliances: an approximately 8’-0” by 11’-0” protrusion into the front yard along Lacombe Avenue, creating a front yard with a depth of approximately 2’-0” along that portion of Lacombe Avenue (a front yard with a minimum depth of 10’-0” is required); and an increase in the lot coverage on the site from 67 percent to 68 percent (the maximum permitted lot coverage is 60 percent); and

WHEREAS, because the addition of the proposed elevator does not comply with the underlying bulk regulations in the R5 district, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the programs located within the Building are targeted to children and adults with mental and physical disabilities and that, as a result, an elevator for ADA access is required on all floors to fulfill their mission; and

WHEREAS, the applicant represents that the front yard waiver is necessary to provide an elevator which can be constructed without discontinuing the operation of the facility; and

WHEREAS, the applicant states that a complying development with an elevator would require additional vestibules at each level which would result in a loss of programmatic space, and require modification of the Building’s existing joists and framing; and

WHEREAS, by letter dated September 1, 2011, New York City Councilmember Annabel Palma states that \$895,000 has been secured to support the installation of the elevator and new classrooms at the School; and

WHEREAS, the applicant represents that the Brownell School currently serves 90 children with special education needs and the Development Disabilities at Leake & Watts

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program serves 107 individuals and children; and

WHEREAS, at project completion, the Brownell School will serve 140 children with special education needs; and

WHEREAS, the applicant represents that the School is a NYS Department of Education approved preschool special education program under contract with the NYC Department of Education to provide special education and universal prekindergarten services; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the School's programmatic need to provide services for children and adults with mental and physical disabilities is legitimate, and agrees that the proposed enlargement is necessary to address its needs; and

WHEREAS, accordingly, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the School is a non-profit educational institution, and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the expansion of the School into the front yard will not have an adverse impact on the surrounding neighborhood; and

WHEREAS, the applicant provided a front yard diagram indicating that the front yard of the Building is compatible with the front yards of the homes in the surrounding neighborhood, which have yards ranging in depth between ten feet and 65 feet; and

WHEREAS, the applicant states that the elevator will encroach into the required 10'-0" front yard by 8'-0" feet, resulting in a front yard with a depth of 2'-0" for a distance of only 11'-0" out of the 208'-0" of street frontage on the site; and

WHEREAS, the Board asked for landscaping and planting to be provided in front of the Building; and

WHEREAS, the applicant submitted a plan to enhance the site's front yard with landscaping; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the

surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the school could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested front yard and open space waiver is the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R5 zoning district, on a site within an R5 zoning district, the installation of an elevator in an existing building occupied by a school (UG 3), which does not comply with the zoning regulations for front yards or lot coverage, contrary to ZR §§ 24-33 and 24-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 6, 2012," twelve- (12) sheets; and *on further condition*:

THAT the parameters of the Building will be: a floor area of 21,198 sq. ft. (1.96 FAR); a lot coverage of 68 percent; and a front yard with a minimum depth of approximately 2'-0" along Lacombe Avenue, as illustrated on the approved plans;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## 107-12-BZ

### CEQR #12-BSA-120M

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Third Avenue Tower LLC, owner; Blink 600 Third Avenue Inc, lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*). C5-3, C2.5 and R8B (MiD) zoning district.

PREMISES AFFECTED – 600/18 Third Avenue, aka 159/65 E. 39<sup>th</sup> Street, aka 150/2 East 40<sup>th</sup> Street, west side of 3<sup>rd</sup> Avenue between E. 39<sup>th</sup> Street and E. 40<sup>th</sup> Street, Block 895, Lot 45, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Hiram Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 11, 2012, acting on Department of Buildings Application No. 121026889, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ in C5-3 zoning district is not permitted As-of-Right as per section ZR 32-10 and a special permit by the Board of Standards and Appeals is required to comply with ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-3 zoning district within the Special Midtown Zoning District, the operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and first floor of an existing 42-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, Community 6, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject PCE is located on the west side of Third Avenue between East 39<sup>th</sup> Street and East 40<sup>th</sup> Street, in a C5-3 zoning district within the Special Midtown Zoning District; and

WHEREAS, the site has approximately 197 feet of frontage on Third Avenue, 90 feet of frontage on East 39<sup>th</sup> Street, 158 feet of frontage on East 40<sup>th</sup> Street, and a total lot area of 24,673 sq. ft.; and

WHEREAS, the zoning lot is developed with a 42-story office building erected pursuant to a variance (790-68-BZ) and administrative appeal (595-69-A) granted by the

Board that waived certain tower coverage requirements under the Zoning Resolution and allowed lot line openings contrary to the Administrative Code; and

WHEREAS, the applicant represents that the previous approvals are not affected by the proposed PCE; and

WHEREAS, the proposed PCE will occupy a total of approximately 16,885 sq. ft. of floor space, including 735 sq. ft. of floor area at the first floor, 528 sq. ft. of floor space at the cellar level, and 15,622 sq. ft. of floor space at the sub-cellar level; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 9:00 a.m. to 5:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the applicant states that the proposed PCE will comply with the goals of the Special Midtown Zoning District; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA120M, dated April 14, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, permit, on a site located in a C5-3 zoning district within the Special Midtown District, the operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and first floor of an existing 42-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 10, 2012" - Three (3) sheets, and *on further condition*:

THAT the term of this grant will expire on August 21, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2012.

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**116-12-BZ**  
**CEQR #12-BSA-125M**

APPLICANT – Francis R. Angelino, Esq., for Spring Swinehart et al., owner; Exceed Fitness, LLC, lessee.

SUBJECT – Application April 24, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Exceed Fitness*). C1-9 zoning district.

PREMISES AFFECTED – 1477 Third Avenue, between E. 83<sup>rd</sup> and E. 84<sup>th</sup> Streets, Block 1529, Lot A, Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Francis R. Angelino.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 121013090, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C1-9 zoning district, the operation of a physical culture establishment (PCE) on portions of the cellar and ground floors of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, Community 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Collins; and

WHEREAS, the subject PCE is located on the east side of Third Avenue between East 83<sup>rd</sup> Street and East 84<sup>th</sup> Street, in a C1-9 zoning district; and

WHEREAS, the site has approximately 26 feet of frontage on Third Avenue, a depth of 100 feet, and a total lot area of approximately 2,595 sq. ft.; and

WHEREAS, the proposed PCE will occupy 2,075 sq. ft. of floor area on the first floor, with an additional 1,875 sq. ft. of floor space at the cellar level.; and

WHEREAS, the PCE will be operated as Exceed Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Friday, from 5:30 a.m. to 8:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding

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neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since April 21, 2012, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time between April 21, 2012 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA125M, dated April 20, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C1-9 zoning district, the operation of a PCE on portions of the cellar and ground floors of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 3, 2012"-Two (2) sheets, and *on*

*further condition:*

THAT the term of this grant will expire on April 21, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2012.

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## **42-10-BZ**

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116' west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to October 16, 2012 at 1:30 P.M., for adjourned hearing.

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## **5-11-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Dumbo Development, LLC, owner.

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a new five-story residential development, contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

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## COMMUNITY BOARD #2BK

### APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Carre Berilacqua.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## 93-11-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*).

M1-1 zoning district

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

## COMMUNITY BOARD #4BK

### APPEARANCES –

For Applicant: Moshe M. Friedman, Councilwoman Sara M. Gonzalez and Michael J. Schweinsburg.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

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## 157-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1968 2<sup>nd</sup> Avenue Realty LLC., owner.

SUBJECT – Application October 5, 2011– Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.

PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101<sup>st</sup> Street, Block 1673, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #11M

### APPEARANCES –

For Applicant: Nora Martins.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## 168-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*), contrary to floor area (§§113-11, 503, 51, 77-02, 23-141, 24-11), open space and lot coverage (§§23-141, 24-11, 77-02, 113-11), front, side and rear yard (§§113-11, 503, 543, 77-02, 23-464, 47, 471), height and setback (§§113-11, 503, 55, 77-02, 23-631,

633, 24-593), planting and landscaping (§§113-12, 23-45, 23-451, 113-30) and parking (§§113-58, 25-31) regulations.

R5, R6A, and R5 (Ocean Parkway Special District) zoning district.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Nora Martins, N. Lanza and John Field.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

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## 178-11-BZ

APPLICANT – Eric Palatnik, P.C., for Elie Zeitoune, owner.

SUBJECT – Application November 29, 2011 – Special Permit (§73-622) for the enlargement of an existing two story, semi-detached single family home, contrary to floor area and open space (§23-141(b)); side yard (§23-461) and rear yard (§23-47) requirements. R5 zoning district.

PREMISES AFFECTED – 1944 East 12<sup>th</sup> Street, between Avenue S and T, Block 7290, Lot 24, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

### APPEARANCES –

For Applicant: Eric Palatnik and Ibrahim Faks.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing closed.

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## 7-12-BZ

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

## COMMUNITY BOARD #4BK

### APPEARANCES –

For Applicant: Eric Palatnik, John Paul Murray, Carla Murray and Jeff Fisch.

For Opposition: Dale Degenshein and Jann Leemino.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

# MINUTES

-----  
**9-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES –

For Applicant: Eric Palatnik and Igar Zaslisky.

**ACTION OF THE BOARD** – Laid over to October 25, 2012, at 1:30 P.M., for continued hearing.

-----

**16-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug and Ian Rasmussen.

For Opposition: Ricardo Strobert, Sandra Davis, Renee’ L. Branch and Fitz Murray.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

-----

**23-12-BZ**

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES –

For Applicant: Chris Wright.

**ACTION OF THE BOARD** – Laid over to September 11, 2012, at 1:30 P.M., for deferred decision.

-----

**30-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik, Raymond Chen and Hiram Rothkrug.

For Opposition: Michelle Khuu and Yuka Yoneda.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

-----

**43-12-BZ**

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Raymond Levin, Jack Freeman, Barbara K. and Zella Jones.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing closed.

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**48-12-BZ**

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations (§121-11). C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of Manhattan.

**COMMUNITY BOARD #4M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

THE VOTE TO CLOSE HEARING –

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# MINUTES

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Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
September 11, 2012, at 1:30 P.M., for decision, hearing  
closed.

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## 71-12-BZ

APPLICANT – Akerman Senterfitt, LLP, for Archer  
Avenue Partners, LLC, owner; Neighborhood Housing  
Services of Jamaica, Inc., lessee.

SUBJECT – Application March 23, 2012 – Variance (§72-  
21) to allow for a new 14-story residential building with  
ground floor retail, contrary to floor area (§§115-211/23-  
942), height and setback (§115-233), and accessory off  
street parking (§115-51). C6-2/Downtown Jamaica Special  
Zoning District.

PREMISES AFFECTED – 165-10 Archer Avenue,  
southeast corner of 165<sup>th</sup> Street and Archer Avenue, Block  
10155, Lot 105, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Steven Sinacori, Kimberley McLean and  
Ariel Aufgang.

**ACTION OF THE BOARD** – Laid over to October  
16, 2012, at 1:30 P.M., for continued hearing.

-----

## 79-12-BZ

APPLICANT – Jeri Fogel, for Impala Retail Owner LLC,  
owner; House of Jai, lessee.

SUBJECT – Application April 4, 2012 – Special Permit  
(§73-36) to permit the operation of a physical culture  
establishment (*House of Jai*). C1-9 zoning district.

PREMISES AFFECTED – 1456 First Avenue, east side of  
First Avenue, 50’ south of corner of 76<sup>th</sup> Street, Block 1470,  
Lot 1002, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Joshue Price and Jeri Fogel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to  
September 11, 2012, at 1:30 P.M., for decision, hearing  
closed.

-----

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



# MINUTES

## \*Correction

This resolution adopted on August 7, 2012, under Calendar No. 191-11-BZ and printed in Volume 97, Bulletin Nos. 32-33, is hereby corrected to read as follows:

### 191-11-BZ

#### CEQR #12-BSA-052K

APPLICANT – Sheldon Lobel, P.C., for Zerillo Family Trust, owner.

SUBJECT – Application December 19, 2011 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to maximum allowable floor area (§23-141(b)). R 4-1 zoning district.

PREMISES AFFECTED – 1246 77<sup>th</sup> Street, between 12<sup>th</sup> and 13<sup>th</sup> Avenues, Block 6243, Lot 24, Borough of Brooklyn.

#### COMMUNITY BOARD #10BK

#### APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 17, 2011, acting on Department of Buildings Application No. 320356645, reads:

ZR 23-141(b) proposed floor area exceeds permitted one

Proposed enlargement is not permitted; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R4-1 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirement for floor area ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 12, 2012 after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Otley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 77<sup>th</sup> Street, between 12<sup>th</sup> Avenue and 13<sup>th</sup> Avenue, within an R4-1 zoning district; and

WHEREAS, the subject site has a total lot area of 1,300 sq. ft., and is occupied by a single-family home with a floor area of 1,694 sq. ft. (1.30 FAR); and

WHEREAS, the premises is within the boundaries of a

designated area in which the subject special permit is available; and

WHEREAS, the subject home initially had a floor area of approximately 1,534 sq. ft. (1.18 FAR), and was subsequently enlarged to its current floor area of 1,694 sq. ft. (1.30 FAR); and

WHEREAS, the applicant now seeks to legalize the prior enlargement and to permit a further 156 sq. ft. increase in the floor area to 1,851 sq. ft. (1.42 FAR); the maximum permitted floor area is 975 sq. ft. (0.75 FAR); and

WHEREAS, at hearing, the Board directed the applicant to remove the second kitchen shown in the plans; and

WHEREAS, in response, the applicant submitted revised plans reflecting the removal of the stove from the basement level of the home; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a table and corresponding map identifying at least five other homes on the same block as the site with similarly converted garages and/or two-story rear enlargements; and

WHEREAS, the applicant notes that the site was zoned R4 until 2007, which permitted an FAR of 1.35, and submitted photographs and Department of Buildings documentation reflecting that the proposed home with an FAR of 1.42 is consistent with a number of recent enlargements in the surrounding area; and

WHEREAS, the applicant notes that it merely seeks to legalize the conversion of the basement level garage to residential floor area and to enclose the open porch above the existing first floor extension in the rear yard of the site, which is closed in on both sides by the immediately adjacent single-family homes, both of which have been extended in the rear on both the first and second story; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §

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# MINUTES

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73-622 and 73-03, to permit, within an R4-1 zoning district, the enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received May 25, 2012”-(5) sheets and “July 5, 2012”-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,851 sq. ft. (1.42 FAR), as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2012.

**\*The resolution has been corrected to remove the portion of the conditions which read: “no approval has been given by the Board as to the use and layout of the cellar;”. Corrected in Bulletin No. 35, Vol. 97, dated August 29, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, Nos. 36-38

September 20, 2012

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### DIRECTORY

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**CHRISTOPHER COLLINS**, *Vice-Chair*

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

**Becca Kelly**, *Counsel*

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# DOCKET

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New Case Filed Up to September 11, 2012

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## 255-12-BZ

247-251 Brighton Beach, north side of Brighton Beach Avenue, 80' west of intersection with Brighton 2 Street., Block 8671, Lot(s) 13, Borough of **Brooklyn, Community Board: 13**. Variance (§72-21) to permit the enlargement of existing buildings to contain commercial and community facility uses that exceeds permitted FAR, locates commercial use above the first story ceiling, and does not provide required accessory parking. R6/C1-2(OP) zoning district. R6/C1-2(OP) district.

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## 256-12-A

195 Havemeyer Street, southeast corner of Havemeyer and South 4th Street., Block 2447, Lot(s) 3, Borough of **Brooklyn, Community Board: 1**. Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as an advertising sign. C4-3 C4-3 district.

-----

## 257-12-BZ

2359 East 5th Street, East side of East 5th Street between Avenue W and Angela Drive., Block 7181, Lot(s) 44, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing three-family home to be converted into a single family home contrary to floor area, open space and lot coverage (ZR 23-141); side yard (23-461) and less than the required rear yard (ZR 23-47). R4 (OP) zoning district. R4(OP) district.

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## 258-12-BZ

113 East 90th Street, north side of East 90th Street, 150' west of the intersection of 90th Street and Park Avenue., Block 1519, Lot(s) 7, Borough of **Manhattan, Community Board: 08**. Variance (§72-21) to permit the conversion of two buildings into a single-family residence which does not comply with lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district. R8B district.

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## 259-12-BZ

5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot(s) 458, Borough of **Bronx, Community Board: 8**. Variance (§72-21) to permit the development of a single-family house contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district. R1-1, NA-2 district.

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## 260-12-BZ

114-01 Sutphin Boulevard, north side of Sutphin Boulevard between Linden Boulevard and 114th Road, Block 12184, Lot(s) 7, Borough of **Queens, Community Board: 12**. Special Permit (§73-243) to permit an accessory drive-through facility to an eating and drinking establishment (McDonald's) within the portion of the lot located in a C1-3/R5D zoning district contrary to §§32-15 & 32-32 as well as a Special Permit (§73-52) to extend the commercial use by 25' into the R3A portion of the lot contrary to § 22-10. C1-3/R5D & R3A district.

-----

## 261-12-BZ

1 York Street, south side of Laight Street between Avenue of Americas, St. John's and York Street., Block 212, Lot(s) 7503, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment on the first and cellar floors of the existing building at the premises. C6-2A (TMU) zoning district. C6-2A; TMU district.

-----

## 262-12-BZ

132-10 149th Avenue, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot(s) 12 & 21, Borough of **Queens, Community Board: 10**. Variance (§72-21) to permit a hotel (UG 5) contrary to use regulations (§42-00). M2-1 zoning district. M2-1 district.

-----

## 263-12-BZ

232 City Island Avenue, site bounded by Schofield Street and City Island Avenue., Block 5641, Lot(s) 10, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to permit senior housing (UG 2), contrary to use regulations (§42-00). M1-1 zoning district. M1-1 district.

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## 264-12-A

222 City Island Avenue, southeast corner of the intersection formed by City Island and Schofield Street., Block 5641, Lot(s) 296, Borough of **Bronx, Community Board: 13**. This application is an administrative appeal filed pursuant to Section 666(7) of the New York City Charter and Appendix G, Section BC G107 of the New York City Administrative Code, to permit a proposed assisted living facility partially in a flood hazard area which does not comply with Appendix G, Section G304.1.2 of the Building Code. M1-1 zoning district. M1-1 district.

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# DOCKET

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**265-12-A**

980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway., Block 5542, Lot(s) 41, Borough of **Bronx, Community Board: 10**. Appeal from Department of Building's determination that sign is not entitled to continued non-conforming use status as an advertising sign . M1-2 & R4/C2-1 M1-2and R4/C2-1 district.

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**266-12-A**

980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway., Block 5542, Lot(s) 41, Borough of **Bronx, Community Board: 10**. Appeal from Department of Building's determination that sign is not entitled to continued non-conforming use status as an advertising sign . M1-2 & R4/C2-1 M1-2 and R4/C2- district.

-----

**267-12-A**

691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street., Block 2562, Lot(s) 94, Borough of **Bronx, Community Board: 1**. Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as advertising sign. M1-2 & R6A M1-3/R6A district.

-----

**268-12-A**

8 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 318, Borough of **Staten Island, Community Board: 1**. Porposed construction of a sinlge family semi -detached building not fronting a mapped street is contray to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

-----

**269-12-A**

10 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 317, Borough of **Staten Island, Community Board: 1**. Proposed construction of a sinlge family semi -detached building not fronting a mapped street is contrary to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

-----

**270-12-A**

16 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 316, Borough of **Staten Island, Community Board: 1**. Proposed construction of a sinlge family semi -detached building not fronting a mapped street is contrary to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

-----

**271-12-A**

18 Pavillion Hill Terrace, corner of Homer Street and Swan Street., Block 569, Lot(s) 285, Borough of **Staten Island, Community Board: 1**. Proposed construction of a sinlge family semi -detached building not fronting a mapped street is contrary to Genrnal City Law Section 36 .R3-1 ZD R3-1 district.

-----

**272-12-A**

1278 Carroll Street, between Brooklyn Avenue and Carroll Avenue, Block 1291, Lot(s) 19, Borough of **Brooklyn, Community Board: 9**. Appeal challenging Depertament of Buildings determination that an existing non conforming single family home may not be enlarged as per ZR 52-22 . R2 zoning district . R2 district.

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**273-12-A**

Major Deegan @ 167 Street, Yankee Stadium, Block 2539, Lot(s) 502, Borough of **Bronx, Community Board: 4**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1 , M1-1 R7-1, M1-1 district.

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**274-12-A**

Major Deegan @ 167 Street, Yankee Stadium, Block 2539, Lot(s) 502, Borough of **Bronx, Community Board: 4**. Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation.R7-1, M1-1 R7-1,M1-1 district.

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**275-12-BZ**

2122 Avenue N, southwest corner of Avenue N and East 22nd Street., Block 7675, Lot(s) 61, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR 23-141; side yard ZR 23-461. R-2 zoning district. R2 district.

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**276-12-BZ**

833/45 Flatbush Avenue, north east corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot(s) 8, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to permit a physical culture establishment within portions of existing commercial building in a C2-4 zoning district. C2-4(R7A),R6B district.

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# DOCKET

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**



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# CALENDAR

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**OCTOBER 16, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 16, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----

## **SPECIAL ORDER CALENDAR**

### **299-82-BZ**

APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.

SUBJECT – Application May 4, 2012– Amendment to a prior Board approval to allow for a new building to be constructed. C6-1 Zoning District.

PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2,200, Borough of Manhattan.

**COMMUNITY BOARD #3M**

-----

### **84-91-BZ**

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner. SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted Use Group 6 use (Professional Offices) in a residential building which expires on September 15, 2012. R4A zoning district.

PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

**COMMUNITY BOARD #11BX**

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### **141-06-BZ**

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60<sup>th</sup> Street, corner of 21<sup>st</sup> Avenue and 60<sup>th</sup> Street, Block 5521, Lot 42, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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**APPEALS CALENDAR**

### **196-12-A**

APPLICANT – Deidre Duffy, for Breezy Point Cooperation, Inc., owner; Carol Anderson, lessee.

SUBJECT – Application June 19, 2012 – Proposed alteration and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 26 Ocean Avenue, west side of Ocean Avenue, 492.25' north of Rockaway Point Boulevard. Block 16350, Lot 300. Borough of Queens.

**COMMUNITY BOARD #14Q**

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**OCTOBER 16, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 16, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **160-11-BZ**

APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.

SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (Jewish National Fund), contrary to rear yard ZR §24-33, rear yard setback ZR §24-552, lot coverage ZR §24-11, and height and setback ZR §23-633, §24-591 regulations. R8B zoning district.

PREMISES AFFECTED – 42 East 69<sup>th</sup> Street, south side of East 69<sup>th</sup> Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.

**COMMUNITY BOARD #8M**

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### **45-12-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Bais Sina, owner.

SUBJECT – Application February 27, 2012 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a Synagogue (UG4) which will create non-compliances with respect to floor area ratio and lot coverage (§24-11), front yard (§24-34), side yards (§24-35) and rear yard (§24-36). R5 zoning district.

PREMISES AFFECTED – 1914 50<sup>th</sup> Street, 100' east from the corner formed by 19<sup>th</sup> Avenue and south of 50<sup>th</sup> Street, Block 5462, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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# CALENDAR

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## **56-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141); side yard requirement (§23-461); less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

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## **74-12-BZ**

APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.

SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family residence contrary to floor area, open space and lot coverage (ZR §23-141); side yard (ZR §23-461) and less than the required rear yard (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 252 Exeter Street, west side 350' north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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## **115-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.

SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking for category B1 in Use Group 6. C4-2A zoning district.

PREMISES AFFECTED – 701/745 64<sup>th</sup> Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, Borough of Brooklyn.

**COMMUNITY BOARD #4BK**

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## **195-12-BZ**

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance, permitting the construction of a two story office building (UG6) with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules of Practice and Procedure. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

**COMMUNITY BOARD #10Q**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 11, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**406-82-BZ**

APPLICANT – Eric Palatnik, P.C., for Adolf Clause and Theodore Thomas, owners; Hendel Products, lessee.

SUBJECT – Application May 22, 2012 – Extension of Time to obtain a Certificate of Occupancy for a previously-approved special permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on May 3, 2012. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86<sup>th</sup> Street, northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> Street, Block 6859, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on January 22, 2009; and

WHEREAS, a public hearing was held on this application on July 17, 2012 after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the northeast corner of 24<sup>th</sup> Avenue and 86<sup>th</sup> street, within a C1-3 (R5) zoning district; and

WHEREAS, the site is operated as a McDonald's eating and drinking establishment; and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board adopted a resolution granting a special permit for the installation of an accessory drive-through facility for an existing eating and drinking establishment, for a term of five years; and

WHEREAS, the special permit was subsequently

extended and amended at various times; and

WHEREAS, on July 22, 2008, the Board granted a five-year extension of term, to expire on January 18, 2013; a condition of the grant was that a certificate of occupancy be obtained by January 22, 2009; and

WHEREAS, most recently, on May 3, 2011, the Board granted a one-year extension of time to obtain a certificate of occupancy, which expired on May 3, 2012; and

WHEREAS, the applicant now seeks a one-year extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained by the stipulated date due to open applications at the Department of Buildings which the applicant is working to have closed and/or withdrawn; and

WHEREAS, at hearing, the Board questioned whether the signage at the site is in compliance with C1 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that all excess signage on the site has been removed; and

WHEREAS, based upon its review of the record, the Board finds that the proposed additional one year to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 18, 1983, so that as amended this portion of the resolution shall read: "to permit an extension of one year to obtain a certificate of occupancy, to expire on September 11, 2013; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the grant will expire on January 18, 2013;

THAT the above condition and all relevant conditions from prior grants will appear on the certificate of occupancy; and

THAT a certificate of occupancy will be obtained by September 11, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 310120142)

Adopted by the Board of Standards and Appeals, September 11, 2012.

# MINUTES

## 68-94-BZ

APPLICANT – Troutman Sanders, LLP, for Bay Plaza Community Center, LLP, owner; Bally’s Total Fitness of Greater New York, lessee.

SUBJECT – Application June 26, 2012 – Extension of Time to obtain a certificate of occupancy for a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Bally’s Total Fitness*) on the first and second floors of the Co-Op City Bay Plaza Shopping Center which expired on June 16, 2012; Waiver of the Rules. C4-3/M1-1 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, Baychester Avenue and The Hutchenson River Parkway, Block 5141, Lot 810, Borough of Bronx.

### COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Jeremiah Candreva.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a previously granted special permit for the operation of a physical culture establishment (PCE), which expired on June 16, 2010; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Bronx, states that it takes no position on this application; and

WHEREAS, the site is located on the south side of Bartow Avenue, between Baychester Avenue and the Hutchinson River Parkway, within a C4-3 zoning district; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-op City Bay Plaza shopping center and occupies 20,290 sq. ft. of floor area; and

WHEREAS, the PCE is operated as “Bally Total Fitness”; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C4-3 district, the operation of a PCE for a term of ten years; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years, to expire on November 1, 2014; and

WHEREAS, subsequently, the grant has been amended on various occasions; and

WHEREAS, most recently, on June 16, 2009, the

Board granted a one-year extension of time to obtain a certificate of occupancy, which expired on June 16, 2010; and

WHEREAS, the applicant now requests an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that its application to DOB for a certificate of occupancy for the PCE is pending and that it is conditioned on approval by the Board of the instant application; and

WHEREAS, based upon its review of the record, the Board finds that an extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 1, 1994, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to September 11, 2013; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by September 11, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Extension of Time to obtain a certification of occupancy for a special permit (§73-36) for a physical culture establishment (*Crunch Fitness*), which expired on June 8, 2011. C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Todd Dole.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

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# MINUTES

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WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”), which expired on June 8, 2011; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the PCE is located on the northwest corner of the intersection of Flatbush Avenue and Sterling Place; and

WHEREAS, the site consists of two adjacent lots – Lot 19 (324/34 Flatbush Avenue) and Lot 14 (312/18 Flatbush Avenue) within a C4-2 (R7A) zoning district; and

WHEREAS, the site is located in portions of the cellar and on the first floor and second floor of a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,135 sq. ft., with an additional 2,697 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1999 when, under the subject calendar numbers, the Board granted special permits for each address, to expire on November 23, 2009; and

WHEREAS, on August 11, 2009, the Board granted an extension of term and an amendment to legalize the use of the cellar space, extend the PCE use on the first floor from 629 sq. ft. of floor area to 2,515 sq. ft. of floor area at 324/34 Flatbush Avenue, and to reflect the change in ownership and operation of the PCE; a condition of the grant was that a certificate of occupancy be obtained by February 11, 2010; and

WHEREAS, most recently, on June 8, 2010, the Board granted an extension of time to obtain a certificate of occupancy, which expired on June 8, 2011; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the specified date due to delays associated with restructuring subsequent to a corporate bankruptcy, and issues with the prior architect; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about the lack of progress since the Board’s prior grant, and directed the applicant to provide a schedule for obtaining the certificate of occupancy; and

WHEREAS, in response, the applicant submitted a letter detailing their efforts to obtain a certificate of occupancy for the site since October 2011; and

WHEREAS, the applicant states that the primary cause of the delay in obtaining a new certificate of occupancy is the existence of open job applications filed by previous applicants; and

WHEREAS, the applicant further states that a new architect has been retained and withdrawal applications for each open job have been prepared and, after the open applications have been withdrawn, it is expected that new certificates of occupancy will be obtained within nine months

to a year; and

WHEREAS, the applicant represents that efforts to obtain a temporary public assembly permit from DOB are also in progress; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on November 23, 1999, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy to September 11, 2013, *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy will be obtained by September 11, 2013;

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 DOB shall review egress for compliance with all relevant regulations;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 300740063)

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## **53-01-BZ**

APPLICANT – Sheldon Lobel, P.C., for Charter Management Group, LLC, owner; Eun Sung, Inc., lessee.

SUBJECT – Application April 27, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Silver Star Spa*) in a portion of the first and cellar floors of an existing commercial building which expired on July 10, 2010; Waiver of the Rules. C5-3/C6-4,5 (MID) zoning district.

PREMISES AFFECTED – 6 West 48<sup>th</sup> Street, located on the south of West 48<sup>th</sup> Street between Fifth and Sixth Avenues, Block 1263, Lot 43, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

### **APPEARANCES –**

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

# MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted special permit for a physical culture establishment (PCE), which expired on July 10, 2011; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the south side of West 48<sup>th</sup> Street between Fifth Avenue and Sixth Avenue, partially in a C5-3 district and partially in a C6-4.5 district, within the Special Midtown District; and

WHEREAS, the site has approximately 50 feet of frontage on West 48<sup>th</sup> Street, a depth of 100 feet, and a total lot area of 5,021 sq. ft.; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE occupies approximately 2,900 sq. ft. of floor space located in the cellar, with an entrance at the first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2001 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on July 10, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, the applicant also seeks to legalize minor interior modifications to the approved plans, specifically to reflect an added partition creating separate men’s and women’s shower and locker rooms and minor changes to the layout of one bathroom, the pantry, and reception area; and

WHEREAS, the applicant states that the general layout of the PCE remains the same, but the aforementioned room sizes differ slightly as the result of the prior minor partition changes; and

WHEREAS, based upon its review of the record, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on July 10, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from July 10, 2011, to expire on July 10, 2021, and to permit the noted modifications to the previously-approved plans, *on condition*

that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received April 27, 2012’-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on July 10, 2021;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 102945645)

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 164-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center LLC, owner; ME Clinic Two LLC, lessee.

SUBJECT – Application April 23, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*). The amendment seeks to enlarge the use. C4-1 district.

PREMISES AFFECTED – The Crossings @ Staten Island Mall (280 Marsh Avenue), north of Platinum Avenue, west of Marsh Avenue, east of Staten Island Mall Dr., Block 2400, Lot 300, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for a physical culture establishment (“PCE”), to permit a 1,270 sq. ft. expansion of the PCE; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on

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# MINUTES

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September 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located within The Crossings at Staten Island Mall, which is north of Platinum Avenue, west of Marsh Avenue, and east of Staten Island Mall Drive, within a C4-1 zoning district; and

WHEREAS, the PCE occupies 3,081 sq. ft. of floor area in a commercial unit within a one-story mall building with a total floor area of 75,909 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 2007 when, under the subject calendar number, the Board granted a special permit for the operation of a PCE at the subject site; and

WHEREAS, the applicant now requests an amendment to permit an expansion of the PCE use to an additional 1,270 sq. ft. of floor area within the one-story mall building, for a total of 4,351 sq. ft. of floor area; and

WHEREAS, the applicant states that the PCE will be expanded into an existing adjacent retail space which will be accessed from a new opening created within the existing facility; and

WHEREAS, the applicant further states that the proposed expansion will not result in any new storefront space or signage; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the grant is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 7, 2007, so that as amended this portion of the resolution shall read: "to permit a 1,270 sq. ft. expansion of the PCE on the first floor; *on condition* that any and all work shall substantially conform to drawings filed with this application marked 'Received September 6, 2012' - Three (3) sheets; and *on further condition*:

THAT the term of this grant will expire on October 2, 2017;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 510001258)

Adopted by the Board of Standards and Appeals, September 11, 2012.

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**739-76-BZ**

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application June 1, 2012 – Extension of Term of a Special Permit (§73-35) for the continued operation of an amusement arcade (*Peter Pan Games*) which expired on April 10, 2012; Waiver of the Rules. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for decision, hearing closed.

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**271-90-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

**COMMUNITY BOARD #2Q**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.

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**93-97-BZ**

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor from accessory parking spaces to UG 6 office use. C4-3 zoning district.

PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

**COMMUNITY BOARD #7Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to

# MINUTES

November 20, 2012, at 10 A.M., for continued hearing.

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**135-01-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3" northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for deferred decision.

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**194-02-BZ**

APPLICANT – Sheldon Lobel, P.C., for Shore Plaza LLC, owner; Staten Island Fitness Group, LLC, lessee.

SUBJECT – Application May 16, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness*) which expired on December 1, 2011; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 1775 South Avenue, southeast corner of the intersection formed by Meredith and South Avenues, Block 2800, Lot 37, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for decision, hearing closed.

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**330-05-BZ**

APPLICANT – Vito J. Fossella, P.E., LPEC, for Frank Bennett, owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*AF Bennett Salon and Wellness Spa*) which expired on January 30, 2102; Extension of Time to Complete Construction which expired on January 30, 2011; amendment to further enlarge the PCE into the neighboring cellar; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 350 New Dorp Lane, south side

of New Dorp Lane, 260' east of corner formed by the intersection of New Dorp Lane and Clawson Avenue, Block 4221, Lot 53, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for decision, hearing closed.

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**98-06-BZ/284-06-A**

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A Zoning District.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

**COMMUNITY BOARD #14Q**

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 10 A.M., for continued hearing.

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**APPEALS CALENDAR**

**80-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 331 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 46, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and



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Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2011, acting on Department of Buildings Application No. 120615218 reads, in pertinent part:

- 1) Every building erected after 04/08/29, exceeding 6 stories or 60 ft in height shall be equipped with an elevator as required by MDL Sect. 51.6, art 3... [MDL § 51.6]
- 2) All doors, stairs, hallways must be fire proof constructed. Two hours minimum required. [MDL §§ 148.3, 149.2]
- 3) 1<sup>st</sup> floor above cellar must be fire proof. [MDL § 143]
- 4) Hall & stairs must be separated with fire rated separations. [MDL §146]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject five-story residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 84-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the “Opposition;” and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the “Sliver Rule”) and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with

regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9<sup>th</sup> Street (the “329 Building”), 333 East 9<sup>th</sup> Street (the “333 Building”), and 335 East 9<sup>th</sup> Street (the “335 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,625 sq. ft. and a height of 54’-3”;

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 554.5 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,625 sq. ft. to 8,179.5 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54’-3” to 67’-3” (the maximum permitted height is 75’-0”); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60’-0” in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must

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be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the sixth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed addition is 7'-3" taller than the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, reducing the size of at least one of the two units on each floor; and

WHEREAS, the applicant further represents that, since

the residential units in the building run parallel to each other, from the front to the back of the building, they are already narrow, and the placement of an elevator into the building would effectively cut at least one residential unit into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in combination with the 329 Building, the 333 Building, and the 335 Building is \$4,917,089, which is more than three times the cost of the proposed construction scenario for the four buildings of \$1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed

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enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire...”; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54’-3” to 67’-3” to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway; (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit; (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the 333 Building and the 335 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building’s occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that “it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;” and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the 7’-3” of additional stairs that the sixth floor tenants would be required to climb beyond the 60’-0” height that triggers the elevator requirement does not create a hazard, and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building and between the four buildings on the proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition’s contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

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WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the subject building has been removed and the width of the dormers for the 333 Building and the 335 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under

ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Manhattan Borough Commissioner, dated May 6, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012" - (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 84-11-A

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 333 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 45, Borough of Manhattan.

## COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Application granted on condition.

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## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough  
Commissioner, dated May 11, 2011, acting on Department of  
Buildings Application No. 120615192 reads, in pertinent part:

- 1) Every dwelling erected after April 18<sup>th</sup>, 1929,  
which exceeds sixty feet in height shall be  
equipped with one or more passenger  
elevators, operative at all times, at least one of  
which shall be accessible to every apartment  
above the entrance story [MDL 51.6].
- 2) One means of egress from apartments shall not  
open directly to a stair; it shall open to a  
public hall connecting with an exit stair [MDL  
146.1].
- 3) Every stair shall be completely separated from  
every public hall and shaft by fireproof walls  
(2 hr FRR), with fireproof doors and  
assemblies [MDL 148.3 and MDL 149.2].
- 4) Floor between ground floor and cellar shall be  
fireproof (2-hour fire-resistance rating) [MDL  
143.1]; and

WHEREAS, this is an application pursuant to Multiple  
Dwelling Law (“MDL”) § 310, to vary the noted sections of  
the MDL in order to allow for the proposed one-story vertical  
enlargement of the subject five-story residential building,  
contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the  
MDL to permit one-story vertical enlargements of the three  
adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 85-  
11-A and 103-11-A, were heard concurrently and decided on  
the same date; and

WHEREAS, a public hearing was held on this  
application on June 5, 2012, after due notice by publication in  
*The City Record*, with continued hearings on July 17, 2012  
and August 14, 2012, and then to decision on September 11,  
2012; and

WHEREAS, the premises and surrounding area had  
site and neighborhood examinations by Chair Srinivasan,  
Vice-Chair Collins, Commissioner Hinkson, Commissioner  
Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan,  
recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie  
Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and  
New York State Assembly Member Brian Kananagh provided  
testimony in opposition to this application; and

WHEREAS, representatives for the East Village  
Community Coalition and the Greenwich Village Society for  
Historic Preservation provided testimony in opposition to this  
application; and

WHEREAS, collectively, the parties who provided

testimony in opposition to this application are known as the  
“Opposition;” and

WHEREAS, the Opposition raised the following  
primary concerns: (1) the proposed building does not comply  
with zoning, specifically with regard to ZR § 23-692 (the  
“Sliver Rule”) and ZR § 23-621 (because the dormers exceed  
the permitted dimensions and therefore do not qualify as  
permitted obstructions); (2) the proposed building does not  
comply with other provisions of the MDL, particularly with  
regard to light and air; (3) the proposed enlargement does not  
comport with the low-rise character of the surrounding  
neighborhood; (4) the hardships cited by the applicant in  
complying with the MDL result from their decision to enlarge  
the building and are therefore self-created; (5) the proposal  
would set a precedent for other buildings to add additional  
stories contrary to MDL requirements; and (6) the Board  
should not allow the applicant to substitute their alternative  
fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side  
of East 9th Street, between First Avenue and Second Avenue,  
within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East  
9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 2,306  
sq. ft.; and

WHEREAS, the site is occupied by a five-story non-  
fireproof building, with retail space on the ground floor and a  
total of eight dwelling units on the upper four floors (two  
dwelling units per floor); and

WHEREAS, the applicant notes that the site also  
consists of a separate three-story building and a separate one-  
story building located to the rear of the subject building, which  
are not part of the subject application; and

WHEREAS, the applicant states that the subject  
building is located on a single zoning lot with three adjacent  
buildings located at 329 East 9<sup>th</sup> Street (the “329 Building”),  
331 East 9<sup>th</sup> Street (the “331 Building”), and 335 East 9<sup>th</sup>  
Street (the “335 Building”), each of which is seeking identical  
relief to vary the MDL in order to allow for a one-story  
vertical enlargement; and

WHEREAS, the applicant notes that the proposed  
zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing  
building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of  
approximately 7,011 sq. ft. and a height of 54’-3”;

WHEREAS, the applicant proposes to enlarge the  
building by constructing a sixth floor containing an additional  
1,164 sq. ft. of floor area to be occupied by one additional  
dwelling unit, increasing the total number of dwelling units in  
the building to nine; and

WHEREAS, the applicant states that the proposed  
enlargement will increase the floor area of the subject building  
from 7,011 sq. ft. to 8,175 sq. ft., and in combination with the  
proposed enlargements of the 329 Building, the 331 Building,  
and the 335 Building, will increase the total floor area on the  
proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510  
sq. ft. (3.75 FAR) (the maximum permitted floor area is

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33,580 sq. ft. (4.0 FAR)) and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the sixth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL;

and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed addition is 7'-3" taller than the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, reducing the size of at least one of the two units on each floor; and

WHEREAS, the applicant further represents that, since the residential units in the building run parallel to each other, from the front to the back of the building, they are already narrow, and the placement of an elevator into the building would effectively cut at least one residential unit into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in combination with the 329 Building, the 331 Building, and the 335 Building is \$4,917,089, which is more than three times the cost of the proposed construction scenario for the four buildings of \$1,524,916; and

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WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire...”; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54’-3” to 67’-3” to accommodate two additional residential units effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch

gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit; (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the subject building and the 335 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building’s occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that “it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;” and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the 7’-3” of additional stairs that the sixth floor tenants would be required to climb beyond the 60’-0” height that triggers the elevator requirement does not create a hazard, and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building and between the four buildings on the

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proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the 331 Building has been removed and the width of the dormers for the subject building and the 335 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the

building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Manhattan Borough Commissioner, dated May 11, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012" - (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 85-11-A

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED – 335 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 44, Borough of Manhattan.

### COMMUNITY BOARD #3M

#### APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 18, 2011, acting on Department of Buildings Application No. 120615209 reads, in pertinent part:

- 1) Every building erected after 04/08/29, exceeding 6 stories or 60 ft in height shall be equipped with an elevator as required by MDL Sect. 51.6, art 3... [MDL § 51.6]
- 2) All doors, stairs, hallways must be fire proof constructed. Two hours minimum required. [MDL §§ 148.3, 149.2]
- 3) 1<sup>st</sup> floor above cellar must be fire proof. [MDL § 143]
- 4) Hall & stairs must be separated with fire rated separations. [MDL §146]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject five-story residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the “Opposition;” and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the “Sliver Rule”) and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9<sup>th</sup> Street (the “329 Building”), 331 East 9<sup>th</sup> Street (the “331 Building”), and 333 East 9<sup>th</sup> Street (the “333 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the subject zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,023.5 sq. ft. and a height of 54’-3”; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 1,164.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to nine; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,023.5 sq. ft. to 8,187.8 sq. ft., and in combination with

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the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)) and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the sixth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions

pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed addition is 7'-3" taller than the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, reducing the size of at least one of the two units on each floor; and

WHEREAS, the applicant further represents that, since the residential units in the building run parallel to each other, from the front to the back of the building, they are already narrow, and the placement of an elevator into the building would effectively cut at least one residential unit into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in

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combination with the 329 Building, the 331 Building, and the 333 Building is \$4,917,089, which is more than three times the cost of the proposed construction scenario for the four buildings of \$1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire...”; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54’-3” to 67’-3” to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining

stairs with gypsum board underneath and fire retardant materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit; (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the subject building and the 333 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building’s occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that “it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;” and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the 7’-3” of additional stairs that the sixth floor tenants would be required to climb beyond the 60’-0” height that triggers the elevator requirement does not create a hazard, and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

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WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to emergency egress routes and Fire Department emergency access to the building and between the four buildings on the proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the 331 Building has been removed and the width of the dormers for the subject building and the 333 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any

such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Manhattan Borough Commissioner, dated May 18, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012"- (8) sheets, "August 28, 2012"- (4) sheets and "September 10, 2012"- (1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,

# MINUTES

September 11, 2012.

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**103-11-A**

APPLICANT – Marvin B. Mitzner, Esq., for 327-335 East 9<sup>th</sup> Realty, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeals pursuant to §310 of the Multiple Dwelling Law (MDL) to allow for enlargement to a five-story building, contrary to MDL §§ 51, 143, 146, 148 and 149. R8B zoning district.

PREMISES AFFECTED –329 East 9<sup>th</sup> Street, between 1<sup>st</sup> and 2<sup>nd</sup> Avenue, Block 451, Lot 47, Borough of Manhattan.

**COMMUNITY BOARD #3M**

APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 15, 2011, acting on Department of Buildings Application No. 120615227 reads, in pertinent part:

- 1) Every building erected after 04/08/29, exceeding 6 stories or 60 ft in height shall be equipped with an elevator as required by MDL Sect. 51.6, art 3... [MDL § 51.6]
- 2) All doors, stairs, hallways must be fire proof constructed. Two hours minimum required. [MDL §§ 148.3, 149.2]
- 3) 1<sup>st</sup> floor above cellar must be fire proof. [MDL § 143]
- 4) Hall & stairs must be separated with fire rated separations. [MDL §146]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary the noted sections of the MDL in order to allow for the proposed one-story vertical enlargement of the subject four-story and basement residential building, contrary to MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 85-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on July 17, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application; and

WHEREAS, New York State Senator Tom Duane and New York State Assembly Member Brian Kananagh provided testimony in opposition to this application; and

WHEREAS, representatives for the East Village Community Coalition and the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the “Opposition;” and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed building does not comply with zoning, specifically with regard to ZR § 23-692 (the “Sliver Rule”) and ZR § 23-621 (because the dormers exceed the permitted dimensions and therefore do not qualify as permitted obstructions); (2) the proposed building does not comply with other provisions of the MDL, particularly with regard to light and air; (3) the proposed enlargement does not comport with the low-rise character of the surrounding neighborhood; (4) the hardships cited by the applicant in complying with the MDL result from their decision to enlarge the building and are therefore self-created; (5) the proposal would set a precedent for other buildings to add additional stories contrary to MDL requirements; and (6) the Board should not allow the applicant to substitute their alternative fire safety measures for those required by the MDL; and

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 16 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 1,476 sq. ft.; and

WHEREAS, the site is occupied by a four-story and basement non-fireproof building, with a total of four dwelling units on the first through fourth floors (one dwelling unit per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 331 East 9<sup>th</sup> Street (the “331 Building”), 333 East 9<sup>th</sup> Street (the “333 Building”), and 335 East 9<sup>th</sup> Street (the “335 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 4,006.5 sq. ft. and a height of 48’-0”;

WHEREAS, the applicant proposes to enlarge the building by constructing a fifth floor containing an additional 801.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in

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the building to five; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 4,006.5 sq. ft. to 4,807.8 sq. ft., and in combination with the proposed enlargements of the 331 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,510 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)) and will increase the height of the subject building from 48'-0" to approximately 60'-0" (the maximum permitted height is 75'-0"); and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the subject MDL non-compliances, as detailed below; and

WHEREAS, MDL § 51(6) requires that buildings exceeding six stories or 60'-0" in height must provide an elevator; and

WHEREAS, MDL § 148(3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, MDL § 143 requires that the first floor of the building be fireproof; and

WHEREAS, MDL § 146 requires that the public halls and stairs which serve as a means of egress from the apartments be separated by a fireproof wall; and

WHEREAS, because the proposed addition of the fifth floor exceeds 60'-0" in height, and the building is constructed of non-fireproof material, the Department of Buildings ("DOB") determined that it does not comply with the requirements of MDL §§ 51(6), 148(3), 149(2), 143, and 146; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted

conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that the requirement for an elevator under MDL § 51(6) would necessitate the creation of an entirely new elevator core only because the proposed enlargement reaches the 60'-0" trigger for this requirement, even though it does not exceed six stories; and

WHEREAS, the applicant represents that, aside from the significant expense involved in such an undertaking, creating an elevator core would require significant physical alteration to the occupied dwelling units in the subject building, significantly reducing their size and effectively cutting the units into two segregated portions; and

WHEREAS, the applicant represents that the requirement for fireproofing of the doors, stairs, and hallways under MDL §§ 148(3) and 149(2) is impossible to satisfy without the removal and replacement of the building's core structure, since the building is a wood frame structure; and

WHEREAS, the applicant further represents that such work cannot be performed since the building is currently occupied, and further, even if the building were empty such work would be so extensive that it would be akin to constructing a new building; and

WHEREAS, the applicant states that, similarly, the requirement for the first floor above the cellar to be fireproof under MDL § 143 is impossible to satisfy without removing the entire structure since the first floor and cellar ceiling are composed of wood; and

WHEREAS, finally, the applicant states that the requirement for a separation between the halls and stairs under MDL § 146 would necessitate either enclosing the staircases with fire-rated material or creating fire-rated vestibules between the apartments and the stairway; and

WHEREAS, the applicant represents that the logistics of the subject building are such that enclosing the staircases or creating fire-rated vestibules is impossible without encroaching into the occupied residential units; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed over a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant also submitted a cost analysis from a real estate appraiser estimating that the cost of the fully-MDL compliant scenario for the subject building in combination with the 331 Building, the 333 Building, and the 335 Building is \$4,917,089, which is more than three times

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the cost of the proposed construction scenario for the four buildings of \$1,524,916; and

WHEREAS, the applicant notes that the cost analysis represents only the increased construction costs between the scenarios, and that the MDL-compliant scenario would also create significant loss of rental space and effectively destroy the viability of almost half of the existing apartments; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 331 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL §§ 51(6), 148(3), 149(2), 143, and 146 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire...”; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 48’-0” to approximately 60’-0” to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) the installation of a non-combustible concrete floor in the first floor public hallway, (2) the installation of new fireproof stairs in the cellar/basement spaces; (3) the cladding of all remaining stairs with gypsum board underneath and fire retardant

materials on the risers and treads; (4) the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) the installation of fire proof self-closing doors for the entrance to each dwelling unit; (7) the addition of fire sprinklers throughout the building; (8) the installation of hard-wired smoke detectors in all residential units; and (9) the installation of new fire escapes at the rear of the 333 Building and the 335 Building, to complement the existing fire escapes on the buildings; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building’s occupants; and

WHEREAS, specifically, the applicant states that (1) adding concrete and sheetrock are classic mechanisms to retard fire spread, even though they are not technically deemed fire proof due to the underlying wood structure, (2) replacing the cellar level stairs with fireproof stairs will provide increased fire safety, particularly to first responders, (3) encasing the upper level stairs in fire-retardant materials and adding gypsum board to the public hall ceilings will also add a significant measure of fire safety, and (4) adding sprinklers to the common areas, which are the areas for which the subject MDL provisions are intended to increase fire protection, will decrease the likelihood of fire spread and smoke propagation more efficiently than the creation of segregated halls and stairwells; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that “it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;” and

WHEREAS, the applicant represents that while the MDL is focused primarily on tenant safety from fire protection and security standpoints, the requirement for an elevator appears to be a provision related primarily to tenant convenience, and is properly classified as an amenity; and

WHEREAS, the applicant further represents that the additional stairs that the fifth floor tenants would be required to climb does not create a hazard and does not outweigh the extreme cost of creating elevator cores which would decrease the size of the dwelling units of tenants who currently live without the use of an elevator and would sever half of the dwelling units into disconnected parts; and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, by letter dated July 16, 2012, the Fire Department states that it reviewed the proposed plans as to

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emergency egress routes and Fire Department emergency access to the building and between the four buildings on the proposed zoning lot, and has no objection to the proposal; and

WHEREAS, based on the above, the Board finds that the proposed variance to the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, as to the Opposition's contention that the proposal does not comply with zoning, the Board requested that DOB review the proposed plans for zoning compliance, specifically in regards to the Sliver Rule and whether the dormers qualified as permitted obstructions under ZR § 23-621; and

WHEREAS, by letter dated August 14, 2012, DOB states that if the 331 Building, the 333 Building, and the 335 Building are on the same zoning lot, then they may be considered a single building per ZR § 23-692 and the applications would not be subject to the Sliver Rule's height restriction because the combined abutting street walls above 60 feet are wider than 45 feet; further, DOB states that the 329 Building has a proposed height of 60 feet, which complies with the Sliver Rule; and

WHEREAS, in response, the applicant submitted additional evidence that all four buildings are on a single zoning lot, and states that therefore the buildings comply with the Sliver Rule per DOB's letter; and

WHEREAS, as to the dormer issue, the DOB letter states that the dormers proposed in the applications are approximately seven feet above the maximum base height of 60 feet, therefore the width of the dormers must be reduced to 53 percent of the width of the street wall of each building; further, DOB states that the triangular portions of the dormers proposed within the required setback for the 331 Building, the 333 Building, and the 335 Building need to be removed in order to comply with ZR § 23-621(c)(1); and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormer for the 331 Building has been removed and the width of the dormers for the subject building and the 333 Building have been enlarged, which the applicant states makes the dormer widths consistent with DOB's interpretation; and

WHEREAS, however, the applicant asserts that DOB has previously approved the creation of a dormer sidewall that is less than 65 degrees, and therefore argues that the sidewalls of the proposed dormers are not to be included in the aggregate width of the street walls of the dormers; and

WHEREAS, therefore, the applicant contends that the proposal is in full compliance with the Zoning Resolution, and states that any remaining issues regarding zoning compliance will be addressed with DOB prior to the issuance of a permit; and

WHEREAS, the Board does not take a position as to any zoning compliance, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans associated with the MDL

conditions; and

WHEREAS, as to the Opposition's contention that the building does not comply with other provisions of the MDL, the Board similarly does not take a position as to compliance with provisions of the MDL that are not the subject of the instant application, and if DOB maintains that there is any such non-compliance, it has not been waived by this decision or acceptance of the plans; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, however, at the Board's direction, the applicant revised its plans during the course of the hearing process to preserve the distinctive cornice on the front facade of the buildings (which was originally proposed to be altered) in an effort to make the proposed buildings consistent with the character of the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 51(6), 148(3), 149(2), 143 and 146 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Manhattan Borough Commissioner, dated July 15, 2011, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 31, 2012" - (8) sheets, "August 28, 2012"-(4) sheets and "September 10, 2012"-(1) sheet; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 172-11-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Folarunso Ovalabu, owner.

SUBJECT – Application November 7, 2011 – Appeal seeking determination that the owner of the property has acquired a common law vested right to complete construction under the prior R3-2 zoning. R3A zoning district.

PREMISES AFFECTED – 119-43 197<sup>th</sup> Street, south of intersection of east side of 197<sup>th</sup> Street and south side of 119<sup>th</sup> Avenue, Block 12653, Lot 42, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a semi-detached two-story, two-family residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the site is located on the east side of 197<sup>th</sup> Street between 119<sup>th</sup> Avenue and 120<sup>th</sup> Avenue; and

WHEREAS, the site has 37.31 feet of frontage on 197<sup>th</sup> Street, a depth of 100.44 feet, and a total lot area of 3,261.5 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a semi-detached two-story, two-family home with a floor area of 1,947.75 sq. ft. (0.60 FAR) (the “Building”); and

WHEREAS, the subject site is currently located in an R3A zoning district, but was formerly located within an R3-2 zoning district; and

WHEREAS, the Building complies with the former R3-2 zoning district parameters; and

WHEREAS, however, on October 29, 2007 (the “Rezoning Date”), the City Council voted to adopt the St. Albans/Hollis Rezoning, which rezoned the site to an R3A zoning district, as noted above; and

WHEREAS, the Building does not comply with the R3A zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that New Building

Permit No. 402442095-01-NB was issued on August 13, 2007 (the “Permit”), authorizing the development of a semi-detached two-story, two-family home pursuant to R3-2 zoning district regulations; and

WHEREAS, the Board notes that, as of the Rezoning Date, the applicant had obtained permits for the development and had completed 100 percent of the foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on October 29, 2009, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated June 20, 2012, DOB states that the Permit was lawfully issued, authorizing construction of the Building prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) “there is no fixed formula which measures the content of all the circumstances whereby a

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party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action”; and

WHEREAS, as to substantial construction, the Board notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that, in addition to completing all excavation and foundation work, as of the two-year anniversary of the Rezoning Date the applicant had completed 100 percent of the shell and roof of the building, and the only remaining work to be done prior to filing for a certificate of occupancy is the connection of water, gas, and sewer lines, and the installation of the curb cut and driveway; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: reports from the mortgage lender, including itemized construction holdback ledgers, and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the two-year anniversary of the Rezoning Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, the applicant states that the owner expended approximately \$210,000, including hard and soft costs and irrevocable commitments, out of \$250,000 budgeted for the entire project; and

WHEREAS, thus, the expenditures up to the two-year anniversary of the Rezoning Date represent approximately 84 percent of the projected total cost; and

WHEREAS, as proof of the expenditures, the applicant has submitted reports from the mortgage lender, including itemized construction holdback ledgers, a construction payment chart, and copies of invoices; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board’s consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not

only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that semi-detached buildings are not permitted in the subject R3A zoning district; and

WHEREAS, accordingly, the applicant states that if the owner is not permitted to vest under the former R3-2 zoning, demolition of the existing building would be necessary as it would not be feasible to retain any of the existing structure to construct a compliant home; and

WHEREAS, the applicant further states that, due to the yard regulations associated with the subject R3A district, a complying home would be less than 14 feet in width; and

WHEREAS, the Board agrees that the need to demolish and reconstruct the existing building, coupled with the loss of expenditures and outstanding fees that could not be recouped, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the two-year anniversary of the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 402442095-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 47-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for FHR Development, LLC, owner.

SUBJECT – Application March 2, 2012 – Appeal to Department of Building’ determination that the proposed two-family building did not qualify for rear yard reduction pursuant §23-52. R3-1 zoning district.

PREMISES AFFECTED – 22 Lewiston Street, west side of Lewiston Street, 530.86’ north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: .....0

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Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

## THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated February 2, 2012 by the Staten Island Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”), with respect to DOB Application No. 520089056; and

WHEREAS, the Final Determination states, in pertinent part:

Proposed construction of two family residential building on zoning lot that is not less than 70 feet deep at all points, which is contrary to ZR 23-52; and

WHEREAS, a public hearing was held on this appeal on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 7, 2012, and then to decision on September 11, 2012; and

WHEREAS, the appeal is filed on behalf of the property owner who contends that DOB’s denial was erroneous (the “Appellant”); and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the subject site consists of an irregularly-shaped lot with 114.15 feet of frontage on a mapped but unbuilt portion of Lewiston Street, a depth ranging from a minimum of 40.97 feet along the northern lot line to a maximum of 92.11 feet along the southern lot line, and a total lot area of 6,654 sq. ft.; and

WHEREAS, the Appellant states that the subject site was previously part of a larger tax lot (Lot 152), consisting of property which extended across Lewiston Street, a final mapped street; however, the Appellant represents that the subject site has always consisted of a single and separate zoning lot pursuant to ZR § 12-10; and

WHEREAS, as discussed further below, DOB claims that the Appellant has not established that the subject site constitutes a valid zoning lot that is owned separately and individually from all other tracts of land; and

WHEREAS, the site is currently vacant and is located in an R3-1 zoning district within the Lower Density Growth Management Area (LDGMA); and

## PROCEDURAL HISTORY

WHEREAS, the subject appeal concerns the proposal to construct a two-story two-family home with a floor area of 3,482.3 sq. ft. (0.52 FAR) on the site; and

WHEREAS, the applicant states that the proposed home complies with all requirements of the underlying R3-1 (LDGMA) zoning district; and

WHEREAS, however, the rear yard for the proposed home provides a rear yard with a depth of 10’-7” along the northerly building line and a depth of more than 30’-0” at the southerly building line (a rear yard with a minimum depth of 30’-0” is required), with the home angled parallel to the street line such that the depth of the rear yard increases

proportionally to the increase in the depth of the subject lot from the northern lot line to the southern lot line; and

WHEREAS, on February 2, 2011, DOB issued the Final Determination, denying the Appellant’s application because the maximum depth of the subject site was not less than 70 feet at all points, and therefore was not entitled to a reduction in the depth of the rear yard under ZR § 23-52; and

WHEREAS, the Appellant asserts that the Final Determination is contrary to the plain language of ZR § 23-52, which permits a reduction in the required rear yard depth for lots which are “less than 70 feet deep at any point,” and therefore allows for the reduction of the rear yard depth for portions of the subject lot, which has a depth ranging from 40.97 feet to 92.11 feet; and

WHEREAS, accordingly, the question on appeal is limited to the determination of whether ZR § 23-52 provides a rear yard reduction for all lots that are “less than 70 feet deep at any point” or only when “the maximum depth of such zoning lot is less than 70 feet”; and

## PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the ZR provision the Appellant and DOB cite reads, in pertinent part:

ZR § 23-52 (Special Provisions for Shallow Interior Lots)

R3 R4 R5 R6 R7 R8 R9 R10

In the districts indicated, if an #interior lot#:

- (a) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for a building permit; and
- (b) is less than 70 feet deep at any point;

the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each foot by which the maximum depth of such #zoning lot# is less than 70 feet. On any #interior lot# with a maximum depth of 50 feet or less, the minimum depth of a required #rear yard# shall be ten feet.

\* \* \*

ZR § 33-27 (Special Provisions for Shallow Interior Lots)

C1 C2 C3 C4 C5 C6 C7 C8

In all districts, as indicated, if an #interior lot# consists entirely of a tract of land:

- (a) which was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for a building permit; and
- (b) which is less than 70 feet deep;

the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each two feet by which the maximum depth of such #interior lot# is less than 70 feet. No #rear yard# is required on any #interior lot# with a maximum depth of 50 feet.

\* \* \*

ZR § 62-332 (Rear Yards and Waterfront Yards)

(a)...For such shallow portions of lots, the

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minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable...; and

## DISCUSSION

### **A. The Appellant's Interpretation**

WHEREAS, the Appellant asserts that the language of ZR § 23-52 is clear and unambiguous and that, accordingly, it must be construed "so as to give effect to the plain meaning of the words used" (Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 106-107 (1997); citing Patrolmen's Benevolent Assn. v. City of New York, 41 N.Y.2d 205, 208 (1976) [citations omitted]; and

WHEREAS, specifically, the Appellant argues that the Final Determination is contrary to the plain meaning of ZR § 23-52, which provides for applicability of the provision in the event that the lot "is 70 feet deep *at any point*" [emphasis added]; and

WHEREAS, the Appellant argues that there is no legal or rational basis for DOB to expand the clear language of ZR § 23-52; and

WHEREAS, the Appellant contends that the words "at any point" in ZR § 23-52(b) are unambiguous and should take precedence over potentially conflicting subsequent provisions of the text; and

WHEREAS, specifically, the Appellant argues that the words "at any point" in ZR § 23-52(b) should be given more weight than the potentially conflicting language in ZR § 23-52 permitting a reduction in the depth of the rear yard "by one foot for each foot by which *the maximum depth of such #zoning lot# is less than 70 feet*" [emphasis added] because the words "at any point" appear first in the text and are therefore predominant; and

WHEREAS, the Appellant also contends that DOB's reliance on the phrase "by which the maximum depth of such zoning lot is less than 70 feet" as proof that the intent of the statute is erroneous, and argues that DOB's interpretation appears to create a conflict with the inclusion and plain meaning of the word "any" in the statute; and

WHEREAS, specifically, the Appellant states that, rather than applying an interpretation that is consistent with use of the word "any," DOB's interpretation would make ZR § 23-52(b) a totally superfluous appendage to the statute; and

WHEREAS, the Appellant argues that a more cogent interpretation of the text results from reviewing the "maximum depth" clause more carefully, and looks to the ZR § 12-10 definition of "Lot Depth" ("the mean horizontal distance between the #front lot line# and #rear lot line# of a #zoning lot#...") for guidance; and

WHEREAS, the Appellant contends that DOB's interpretation ignores the clear discrepancy between measuring a "mean" distance (a single number, based on an average of the lot depth), versus the language in ZR § 23-52, which is intended to apply to shallow lots that may be irregularly shaped but which are less than 70 feet deep "at any point" (regardless of the mean measurement); and

WHEREAS, the Appellant further contends that a

reasonable reading of ZR § 23-52 provides for a reduction of one foot for each foot by which the maximum depth of such zoning lot is less than 70 feet (as applied only to those portions of the lot that are a maximum of 70 feet in depth), and that the use of the words "maximum depth" in the provision is merely intended to refer to the maximum depth (a fixed point as opposed to a mean) up to which a property owner is entitled to a reduction in the rear yard; and

WHEREAS, the Appellant argues that by measuring each point, as opposed to the usual "mean" measurement, ZR § 23-52 provides for a rear yard reduction of one foot for portions of a lot that are 69 feet deep, a reduction of two feet for portions that are 68 feet deep, a reduction of three feet for portions that are 67 feet deep, etc.; and

WHEREAS, the Appellant states that this formula would apply down to a depth of 50 feet, at which point a maximum reduction of 20 feet would be permitted (to a rear yard with a minimum depth of ten feet), and that portions of the lot that are greater than 70 feet in depth would not be entitled to a reduction in the required rear yard; and

WHEREAS, the Appellant represents that the proposed interpretation does not require that the word "any" be omitted from consideration, and furthermore accounts for irregularly shaped lots by not providing a benefit to lots that are less than 70 feet deep in only a small area, while also not penalizing lots that are primarily less than 70 feet deep but may have a section that is more than 70 feet in depth; and

WHEREAS, the Appellant also argues that the legislative intent supports its interpretation of the text, and submitted three iterations of the ZR § 23-52 language: (1) the text of the section from Zoning New York City, the 1958 proposal for the update of the Zoning Resolution prepared by Voorhees Walker Smith & Smith (the "1958 Voorhees Proposal"); (2) the original text of the section from the December 15, 1961 Zoning Resolution (the "1961 Text"); and (3) the February 20, 1964 resolution by the Board of Estimate amending ZR § 23-52 (the "1964 Amendment"); and

WHEREAS, the Appellant notes that the 1958 Voorhees Proposal did not include the words "at any point" in subsection (b) of the proposed text, and contends that the fact that the text was changed from the 1958 Voorhees Proposal to include the words "at any point" in subsection (b) of the 1961 Text demonstrates a clear intent to have the section apply to zoning lots with varied depths, and to allow the section to apply to zoning lots that might exceed a depth of 70 feet at certain points; and

WHEREAS, the Appellant further contends that the inclusion of the word "any" in the 1961 Text was not an arbitrary inclusion, and by any reasonable interpretation the addition of this word must be considered an effort to expand the application of the provision; and

WHEREAS, the Appellant argues that the 1964 Amendment further evidences the intent to expand the application of ZR § 23-52 because it allows the provision to apply within R3, R4, and R5 zoning districts where it previously only applied in R6 through R10 zoning districts, and the legislature's expansion of the application of the

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provision to lower density residential neighborhoods reflects that the history of amendments to ZR § 23-52 is one of expansion, not limitation, and the presence of potentially contradictory words within ZR § 23-52 should be viewed in the context of the history of expansion of this provision; and

WHEREAS, the Appellant also points to ZR §§ 33-27 and 62-332(a) as further evidence of the intended meaning of ZR § 23-52, specifically with regards to the inclusion of the words “at any point” in ZR § 23-52(b); and

WHEREAS, the Appellant notes that ZR § 33-27, which is the commercial/community facility equivalent to ZR § 23-52, parallels the language of ZR § 23-52, however ZR § 33-27(b) does not include the language “at any point;” and

WHEREAS, the Appellant argues that the purposeful inclusion of “at any point” in ZR § 23-52 clearly and unambiguously calls for application of a different standard than ZR § 33-27, and contends that the relevant language of ZR § 23-52 should be read as follows: “the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such *portion of the* zoning lot is less than 70 feet” [language added]; and

WHEREAS, the Appellant asserts that such an interpretation provides for relief where a residential lot is unreasonably shallow, but avoids granting relief for portions of a lot where it is possible to provide a required rear yard; and

WHEREAS, the Appellant represents that in similar sections of the Zoning Resolution enacted on later dates, the Zoning Resolution includes language designed to indicate the application of provisions that apply to portions of lots; and

WHEREAS, specifically, the Appellant argues that ZR § 62-332(a), which concerns the required depth of waterfront yards (and provides relief for shallow lots) is an example of a section of the Zoning Resolution which addresses this issue, by noting that: “[f]or such shallow portions of lots, the minimum depth may be reduced by one foot for each foot that the lot dimension measured from such edge is less than 70 or 80 feet, as applicable” [emphasis added]; and

WHEREAS, the Appellant notes that the reference to shallow portions of lots is similarly repeated in ZR §§ 62-332(b) and 62-53(a)(3)(i); and

WHEREAS, the Appellant asserts that, rather than ignore the intentional inclusion of the “at any point” language in ZR § 23-52, it is more reasonable to assume that the drafters merely neglected to modify the second part of the provision to refer to the affected “portions” of the lot; and

## **B. The Department of Buildings Interpretation**

WHEREAS, DOB argues that the Appellant’s interpretation disregards the plain meaning of the text because ZR § 23-52 specifies that a reduction is allowed only where the maximum depth of the lot is greater than 70 feet, regardless of any point that may be shallower than 70 feet; and

WHEREAS, DOB asserts that, although a lot may meet the criteria set forth in subparagraphs (a) and (b), the operative language of ZR § 23-52 is contained in the last paragraph, which reflects that the maximum depth of the lot

is the critical dimension for the purpose of calculating the amount of the rear yard deduction; and

WHEREAS, DOB further asserts that the purpose of the phrase under ZR § 23-52(b) describing a lot “which is less than 70 feet deep at any point” is to identify the category of interior lots for which a reduction may be available, and pursuant to the last paragraph of the text, for lots that meet the prerequisites of subsections (a) and (b), a lot having a maximum depth of less than 70 feet may apply one formula to reduce the rear yard depth, and a lot having a maximum depth of less than 50 feet may apply another formula; and

WHEREAS, DOB contends that subsections (a) and (b) describe a threshold that must be met prior to the application of the reduction formula, but satisfaction of subsections (a) and (b) do not guarantee a rear yard reduction, nor do they establish how much of a reduction is available; and

WHEREAS, by letter dated July 13, 2012, the Department of City Planning (“DCP”) states that it agrees with DOB’s interpretation of ZR § 23-52, noting that “[s]ince the maximum depth of the zoning lot, as stated by the applicant, is more than 70 feet deep, no reduction is possible;” and

WHEREAS, DOB argues that, contrary to the Appellant’s claim that the phrase “any point” was intentionally added to the 1961 Text because it intended to change the 1958 Voorhees Proposal which did not include such language, the addition or omission of the words “any point” does not change the fact that the rear yard depth reduction allowed by ZR § 23-52 is calculated only according to a lot’s maximum depth; and

WHEREAS, DOB asserts that both the 1958 Voorhees Proposal and the adopted text of ZR § 23-52 allow a rear yard to be reduced by one foot for each foot by which the maximum depth of the zoning lot is less than 70 feet, and that even though the words “at any point” were added in the adopted 1961 Text, the last paragraph of the section dictates that the reduction is calculated based on the amount by which the *maximum* lot depth is less than 70 feet, and there is no rational application of this formula that allows a rear yard depth reduction if the zoning lot’s maximum depth is 70 feet or more; and

WHEREAS, as to the Appellant’s contention that the 1964 Amendment’s addition of R3 through R5 zoning districts to the list of districts in which the rear yard reduction may be taken demonstrates an intent to expand the application of ZR § 23-52 to permit a reduction in rear yard depth for lots having varying depths which fall short of 70 feet at certain points and exceed 70 feet at certain points, DOB asserts that the addition of applicable zoning districts has no bearing on the circumstances under which the statute allows a rear yard depth reduction; and

WHEREAS, DOB further argues that the minor differences in the versions of the 1958 Voorhees Proposal, the 1961 Text, the 1964 Amendment, as well as the February 2, 2011 amended text which removed the phrase

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“consists of a tract of land” from ZR § 23-52, do not affect the critical part of the text that sets forth the rear yard depth reduction calculation, and the meaning of the section did not change as a result of any of these minor amendments; and

WHEREAS, as to the Appellant’s claim that the fact that ZR § 33-27 does not include the phrase “at any point” and is purposefully dissimilar to the language of ZR § 23-52, DOB asserts that there is no basis to conclude that the words “at any point” in ZR § 23-52 allow a rear yard reduction along shallow portions of a lot in the residential district, and the absence of such words in ZR § 33-27 allow a rear yard reduction only where every point on the lot is less than 70 feet deep, since both sections only permit a deduction that corresponds to the amount by which the maximum lot depth is less than 70 feet; and

WHEREAS, as to the Appellant’s claim that the language of ZR § 62-332(a), which allows a reduction in minimum depth of a rear yard along portions of waterfront zoning lots, should be used as guidance in interpreting ZR § 23-52, DOB argues that the two provisions are not comparable; and

WHEREAS, specifically, DOB asserts that ZR § 62-332(a) is unlike ZR § 23-52 (and ZR § 33-27) in that it allows a rear yard reduction along shallow portions of the waterfront zoning lot rather than a reduction of the minimum required rear yard for the entire lot; and

WHEREAS, DOB argues that the difference in the language of ZR § 62-332(a) actually shows that there is a significant difference between the calculation of a rear yard reduction on a shallow interior lot and on a waterfront lot, as there is no indication that a reduction is allowed along the shallow portions of interior lots, and contrary to the Appellant’s claim, the meaningful difference in language between these sections makes clear that the rear yard reduction of ZR § 23-52 is only available for the entire lot if the maximum depth of the lot is less than 70 feet; and

## CONCLUSION

WHEREAS, the Board agrees with DOB and DCP’s interpretation of ZR § 23-52 as allowing for a reduction of the depth of the rear yard only if the zoning lot is less than 70 feet deep at every point; and

WHEREAS, specifically, the Board agrees with DOB that the operative language of ZR § 23-52 is found in the last paragraph, which states that “the depth of a required #rear yard# for such #interior lot# may be reduced by one foot for each foot by which the maximum depth of such #zoning lot# is less than 70 feet...” and that satisfaction of subsections (a) and (b) of ZR § 23-52 does not guarantee a rear yard reduction; and

WHEREAS, the Board disagrees with the Appellant’s claim that the language “less than 70 feet deep at any point” is clear and unambiguous, given that when the statute is read in its entirety, the language relied upon by the Appellant is clearly at odds with the last paragraph of the statute (“by which the maximum depth of such #zoning lot# is less than 70 feet”); and

WHEREAS, the Board acknowledges that there is a

contradiction between the words “at any point” in ZR § 23-52(b) and “maximum depth” in the last paragraph of the statute; however, the Board finds that when the statute is read in its entirety the only rational way to interpret the text is to allow for a rear yard reduction only if the zoning lot is less than 70 feet deep at every point; and

WHEREAS, the Board disagrees with the Appellant’s argument that the language “at any point” is predominant in the text and should be given more weight than the words “maximum depth” merely because the phrase “at any point” is found earlier in the text of ZR § 23-52; and

WHEREAS, the Board notes that the text of ZR § 23-52 is formatted in such a way that ZR §§ 23-52(a) and (b) are subsections of the main body of the text which begins “[i]n the districts indicated, if an #interior lot#,” and which resumes in the last paragraph which provides the reduction formula that serves as the operative language of the section and includes the phrase “the maximum depth of such #zoning lot#”; therefore, the Board finds no support for the Appellant’s claim that the phrase “at any point” should be given more weight in interpreting the statute; and

WHEREAS, the Board finds that the formula advocated by the Appellant for applying the rear yard reduction of ZR § 23-52, which relies in part on the ZR § 12-10 definition of “lot depth” to interpret the text and would create a “sliding scale” whereby the depth of a rear yard would vary in accordance with the portions of the lot that are less than 70 feet, is not supported by the text; and

WHEREAS, the Board notes that ZR § 23-52 refers only to “the maximum depth” of a zoning lot and at no point uses the term “lot depth”; as such the Board does not find it appropriate to invoke the definition of “Lot Depth” in ZR § 12-10 in order to give meaning to the phrase “maximum depth”; and

WHEREAS, the Board further rejects the Appellant’s suggestion that the Board should alter the relevant language of ZR § 23-52 to read: “the depth of a required rear yard for such interior lot may be reduced by one foot for each foot by which the maximum depth of such *portion of the* zoning lot is less than 70 feet” [language added]; and

WHEREAS, the Board finds that while the text of ZR § 23-52 may be imperfect, there is no rational basis for the Board to add language to a section of the Zoning Resolution that was not included by the drafters of the text, and if the Appellant seeks to have the text of the Zoning Resolution amended it can pursue such an amendment at the City Planning Commission; and

WHEREAS, the Board disagrees with the Appellant’s assertion that the legislative history of ZR § 23-52 supports its interpretation of the text; and

WHEREAS, the Board agrees with DOB that the 1964 Amendment’s addition of R3 through R5 zoning districts to the list of districts in which the rear yard reduction may be taken has no bearing on the circumstances under which the statute allows a rear yard depth reduction, and contrary to the Appellant’s claim, does not demonstrate an intent to expand the application of ZR § 23-52; and

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WHEREAS, the Board finds that none of the amendments to the text of ZR § 23-52 demonstrate an intent that the section be applied to allow a reduction in the depth of the rear yard for lots that have a maximum depth of 70 feet or more; and

WHEREAS, to the contrary, the Board notes that the commentary that accompanies the 1964 Amendment states that:

Sections 23-52 and 24-37 of the Zoning Resolution provide for a reduction in the depth of required rear yards in R6, R7, R8, R9 and R10 Districts, *if the affected lots are less than 70 feet in maximum depth*. This amendment will permit the same reduction of the depth of rear yard in R3, R4 and R5 Districts [emphasis added]; and

WHEREAS, accordingly, the Board finds that the commentary to the 1964 Amendment, which is the only portion of the legislative history materials provided by the Appellant which addresses the language at issue in the subject appeal, actually supports DOB and DCP's interpretation of the text in that it indicates that the intent of the text is for rear yard reductions to be permitted only for lots that "are less than 70 feet in maximum depth"; the commentary to the 1964 Amendment does not mention the language "at any point"; and

WHEREAS, the Board agrees with DOB that the fact that phrase "at any point" is absent from the text of ZR § 33-27 (the commercial/community facility equivalent to ZR § 23-52) does not provide a basis to conclude that in residential districts ZR § 23-52 allows a rear yard reduction along shallow portions of a lot, while in commercial districts ZR § 33-27 only allows a rear yard reduction where every point on the lot is less than 70 feet deep, since both sections only permit a deduction that corresponds to the amount by which the maximum lot depth is less than 70 feet; and

WHEREAS, the Board notes that the Appellant has not provided any rationale as to why a more liberal formula for providing a rear yard reduction should apply to residential districts as opposed to commercial districts, and the Board is not convinced that the mere inclusion of the words "at any point" in ZR § 23-52 was intended to evoke a significantly different formula for calculating a rear yard reduction where the text of ZR §§ 23-52 and 33-27 are otherwise substantially identical; and

WHEREAS, as to the Appellant's comparison of the language of ZR § 23-52 and 62-332(a), the Board agrees with DOB that the difference in the language of ZR § 62-332(a) actually shows that there is a significant difference between the calculation of a rear yard reduction on a shallow interior lot and on a waterfront lot, and the meaningful difference in language between these sections makes clear that the rear yard reduction of ZR § 23-52 is only available for the entire lot if the maximum depth of the lot is less than 70 feet; and

WHEREAS, the Board notes that during the course of the hearing process DOB raised an additional concern that the subject site also did not satisfy the threshold requirement

under ZR § 23-52(a) because the Appellant did not demonstrate that the site was a zoning lot owned separately and individually from all other tracts of land on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, however, because DOB's objection related to ZR § 23-52(a) was not part of the Final Determination which serves as the basis of this appeal, and because the Board deems it unnecessary to make a determination on the ZR § 23-52(a) issue in order to reach a decision on the merits of the subject appeal, the Board therefore finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, ZR § 23-52 allows a reduction in the depth of the required rear yard only when the maximum depth of the zoning lot is less than 70 feet at every point; and

*Therefore it is Resolved* that the subject appeal, seeking a reversal of the Final Determination of the Staten Island Borough Commissioner, dated February 2, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 201-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Scott Whalen, owner; TSC Building, LLC, lessee.

SUBJECT – Application June 28, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 112 Alberta Avenue, southeast corner of intersection of Wild Avenue and Alberta Avenue, Block 2643, Lot 10, Borough of Staten Island.

## COMMUNITY BOARD #2SI

### APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application No. 520094095, reads in pertinent part:

- 1 – The proposed building which does not front on a legally mapped street is contrary to Article 3, Section 36 of the General City Law; and

WHEREAS, a public hearing was held on this application on September 11, 2012 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated August 8, 2012, the Fire

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Department advises the Board that because the paved portion of Alberta Avenue, which is considered a private access road, has a width of 30 feet, the entire building must be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2.1; and

WHEREAS, in response, the applicant submitted plans reflecting that the building will be fully sprinklered in accordance with the Fire Department's request; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application No. 520094095 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 29, 2012"- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the building shall be fully sprinklered in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

## 119-11-A

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for deferred decision.

## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings' determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 10 A.M., for deferred decision.

## 162-11-A

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Steven M. Sinacori.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for decision, hearing closed.

## 21-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for continued hearing.



# MINUTES

REGULAR MEETING  
TUESDAY AFTERNOON, SEPTEMBER 11, 2012  
1:30 P.M.

103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Jordan Most.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 10 A.M., for continued hearing.

194-12-A

APPLICANT – John Sullivan, for Gelu-Durius Musica, owner.

SUBJECT – Application June 15, 2012 – Appeal challenging the Department of Buildings' determination that the proposed nursery school complies with ZR §24-11. R2A Zoning District.

PREMISES AFFECTED – 213-14 Union Turnpike, south side of Union Turnpike at corner of 214<sup>th</sup> Street, Block 7787, Lot 44, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: John Sullivan.

For Administration: Amandus Derr of DOB.

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: 12:00 P.M.*

**ZONING CALENDAR**

165-11-BZ

**CEQR #12-BSA-034K**

APPLICANT – Sheldon Lobel, P.C., for Agudath Israel Youth of Boro Park, owner.

SUBJECT – Application October 19, 2011 – Variance (§72-21) to enlarge an existing Use Group 4A house of worship (*Agudath Israel Youth of Boro Park*) for an educational center on proposed third and fourth floors and to legalize two interior balconies, contrary to rear yard (§24-36) and lot coverage (§24-11) regulations. R6 zoning district.

PREMISES AFFECTED – 1561 50<sup>th</sup> Street, near the corner of 16<sup>th</sup> Avenue, Block 5453, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 20, 2011, acting on Department of Buildings Application No. 301222665 reads, in pertinent part:

The proposed enlargement of the approved community facility building, to add two side interior balconies at the second floor level within the required 30 foot rear yard and to extend the third and fourth floors to the rear lot line, is contrary to:

1. ZR 24-36, in that the proposed rear yard at the second, third and fourth floors is less than the minimum required rear yard of 30 feet.
2. ZR 24-11, in that the proposed lot coverage is more than the maximum permitted lot coverage of 65%; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R6 zoning district, the enlargement of the third story of an existing synagogue building and the addition of a fourth story to be occupied by a Holocaust education center, and the legalization of the extension of the women's balcony on the

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second floor, which does not comply with rear yard or lot coverage requirements for community facilities, contrary to ZR §§ 24-36 and 24-11; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with continued hearings on July 24, 2012 and August 14, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member David G. Greenfield recommends approval of this application; and

WHEREAS, this application is being brought on behalf of Agudath Israel Youth of Boro Park, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject site is located on the north side of 50<sup>th</sup> Street, between 15<sup>th</sup> Avenue and 16<sup>th</sup> Avenue, within an R6 zoning district; and

WHEREAS, the site has 60 feet of frontage on 50<sup>th</sup> Street, a depth of approximately 100'-2", and a total lot area of 6,011 sq. ft.; and

WHEREAS, the site is currently occupied by a three-story synagogue building (Use Group 4) with a floor area of 13,767 sq. ft. (2.29 FAR) and a total height of 42'-6"; and

WHEREAS, the applicant proposes to legalize the extension of the second floor to the rear lot line and to enlarge the subject building by extending the existing third floor to the rear lot line and adding a fourth floor; and

WHEREAS, the enlarged third and fourth floors of the synagogue building will be occupied by the Kleinman Family Holocaust Education Center (the "Holocaust Center"), a non-profit organization; and

WHEREAS, the proposed building will have the following parameters: a floor area of 21,334 sq. ft. (3.55 FAR) (the maximum permitted floor area is 28,851 sq. ft. (4.8 FAR)); a total height of 60'-0" (the maximum permitted total height is 60'-0"); a lot coverage of 99.26 percent (the maximum permitted lot coverage is 65 percent); and a rear yard with a depth of approximately 0'-2" (a rear yard with a minimum depth of 30'-0" is required above the first floor); and

WHEREAS, the applicant originally proposed to construct a building with no rear yard at the fourth floor; however, in response to concerns raised by the Board during the hearing process, the applicant submitted revised plans reflecting that the fourth floor will be set back ten feet from the rear lot line; and

WHEREAS, the proposed building will provide the following uses: (1) a mikvah, social hall, men's and women's lobbies, coat rooms, and an accessory kitchen for the Synagogue, and a media center and library for the Holocaust Center at the cellar level; (2) the main synagogue and lobby for the Synagogue at the first floor; (3) a women's gallery,

women's lobby, conference room/playroom, office, and coat room for the Synagogue at the second floor; (4) museum exhibit space, a theater and accessory space for the Holocaust Center at the third floor; and (5) a multi-purpose room, temporary exhibit space, a recording studio, offices and accessory space for the Holocaust Center at the fourth floor; and

WHEREAS, because the proposed building does not comply with the underlying zoning regulations for lot coverage and rear yard, the applicant seeks the subject variance; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to provide a women's balcony with sufficient space to accommodate the current size of the congregation and allow for future growth; and (2) to provide floor plates with a sufficient depth to accommodate the layout of interactive displays and permanent exhibition space required to allow the Holocaust Center to operate effectively; and

WHEREAS, the applicant states that the requested lot coverage and rear yard waivers are necessary to legalize the extension of the second floor of the existing synagogue building to accommodate the enlargement of the women's balcony; and

WHEREAS, the applicant further states that attendance at the Synagogue currently ranges from approximately 65 women during a typical weekday service, 100 women during Friday evening service, and 175 women during High Holiday services; and

WHEREAS, the applicant states that a complying women's balcony at the second floor would have a maximum of 1,277 sq. ft. of floor area, and would be capable of accommodating only 116 women, while the existing (proposed to be legalized) women's balcony has a floor area of 1,835 sq. ft. and can accommodate 152 women congregants; and

WHEREAS, accordingly, the applicant states that an as-of-right women's balcony at the second floor would not be sufficient to accommodate the existing congregation, let alone allow for future growth, and therefore the requested rear yard and lot coverage waivers are necessary to satisfy the programmatic needs of the Synagogue; and

WHEREAS, the applicant states that the Synagogue also has a programmatic need to accommodate the proposed Holocaust Center on the third and fourth floors of the subject building, and that the requested waivers are necessary in order to provide floor plates with a sufficient depth to allow for the efficient operation of the Holocaust Center; and

WHEREAS, the applicant submitted a letter from the exhibition designer, stating that the larger floor plate at the third floor is necessary because the design of the historical exhibition is modeled upon a "continuum flow" layout, which enables the visitor to become immersed in the story line and move through a set of interrelated experiences that build sequentially through the space to the end; and

WHEREAS, the letter from the exhibit designer further

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states that the emotional momentum provided by this layout is critical to the success of the design, and there are 14 content areas which the applicant has been able to accommodate on the expanded third floor only with great effort, and splitting the exhibition into two separate floors would break the cohesion required to facilitate the immersive experience; and

WHEREAS, as to the fourth floor, the exhibit designer states that the proposed floor plate with a 10'-0" setback at the rear is the minimum necessary to provide sufficient space to accommodate temporary exhibitions on that floor; and

WHEREAS, specifically, the exhibit designer states that temporary exhibitions, which are typically produced by outside organizations such as the United States Memorial Holocaust Museum or the Museum of Jewish Heritage, are usually provided for periods of ten to 12 weeks and are produced in sizes generally ranging from 3,000 to 3,250 sq. ft., 2000 to 2,500 sq. ft., and 1,000 to 1,500 sq. ft.; and

WHEREAS, the applicant states that an as-of-right floor plate on the fourth floor would only be capable of accommodating approximately 800 sq. ft. of temporary exhibition space which space would also have to be shared with other programming such as lectures and conferences, while the proposed floor plate on the fourth floor, with a rear setback of 10'-0", would allow approximately 1,250 sq. ft. of floor area to be allocated specifically for temporary exhibition space, which the applicant represents is the bare minimum required to accommodate available exhibitions offered at the low end of the size range; and

WHEREAS, the applicant states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the physical constraints of the existing building; and

WHEREAS, as to the constraints of the existing building, the applicant states that an as-of-right scenario which would house the proposed Holocaust Center on the existing third and new fourth and fifth floors would not be feasible, as the existing structure is not designed to sustain the additional assembly load of a fifth floor; and

WHEREAS, specifically, the applicant submitted a letter from the engineer stating that while the existing building was designed to support one additional story (a fourth floor), the added incremental load imposed by a new fifth floor addition would (1) overstress the existing structural support elements by approximately 20 percent; (2) result in severe distress and likely cracking of the exterior walls; (3) cause settlement of the existing structure to such a degree that plumbing and gas lines are likely to crack, electrical conduits are likely to snap, and all interior sheetrock joints are likely to open up; and (4) create the potential for a possible failure and partial collapse of the building; and

WHEREAS, the letter from the engineer further states that in order to support a fifth floor, an independent structural support system for that level would be required, necessitating (1) underpinning of the existing and adjacent structures, (2) reinforcement of the existing structure, (3) placement of new

concrete footings, and (4) new steel columns which would need to be threaded through the existing building perimeter; and

WHEREAS, the letter submitted by the engineer notes that although the above measures are feasible, they are not recommended as they are extremely dangerous under normal circumstances and particularly in the tight urban environment found at the subject site; further, such an undertaking would be extremely costly, rendering the construction impractical; and

WHEREAS, accordingly, the applicant states that the deeper floor plates at the third and fourth floors are necessary both to satisfy the programmatic needs of the Synagogue to provide a functional and efficient permanent exhibition space for the Holocaust Center on the third floor and sufficient space for the temporary exhibition space on the fourth floor, as well as to overcome the physical constraints of the existing building which preclude the construction of a complying fifth floor; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the applicant represents that the Holocaust Center also qualifies as a religious use such that it is entitled to deference as to zoning and its ability to rely on programmatic needs; and

WHEREAS, as evidence of its religious nature, the applicant submitted the mission statement for the Holocaust Center, which states that it is established, in part, for the following reasons: (1) to serve as a Holocaust education center within the framework fashioned by the precepts of Halacha as well as the ethos of Torah Hashkafa; (2) to focus special emphasis on the spiritual and moral dimensions to the Holocaust; (3) to illustrate the life of Torah-observant Jewry in Europe which preceded the Holocaust; (4) to transmit an appreciation for the spiritual and moral heroism by those who retained their faith and adherence to the Torah practices; and (5) to illustrate the resurgence of the Torah world, in the post-Holocaust era, and the rebuilding of Torah communities and institutions; and

WHEREAS, the applicant represents that the primary focus of the Holocaust Center's mission statement is one of religious study; and

WHEREAS, the applicant states that the proposed enlargement of the Synagogue will enable the Holocaust Center to achieve its mission statement by providing (1) a secure place for members of the Orthodox community of Brooklyn and beyond to learn more about the Holocaust

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from the unique perspective of the Orthodox community, (2) an innovative media resource to facilitate memorializing oral testimonies recorded by Holocaust survivors, (3) a permanent exhibition space for unique Judaic materials and religious documents preserved from the Holocaust era, (4) temporary exhibition space for films and exhibits on loan or correlating with Jewish holidays, and (5) a library of historical and religious accounts relating to the Holocaust; and

WHEREAS, the applicant states that, while the Holocaust may be studied within the framework of a variety of different academic disciplines (e.g., sociological, psychological, etc.), the clear focus of the Holocaust Center is to study the Holocaust under the precepts of Jewish law, which the applicant represents qualifies the Holocaust Center for treatment as a religious use; and

WHEREAS, at hearing, the Board directed the applicant to address how the subject Holocaust Center is distinguishable from the holocaust center in Yeshiva & Mesivta Toras Chaim v. Rose, 136 A.D.2d 710 2d Dep't 1988), where the court upheld the Board of Zoning Appeals of the Town of Hempstead's determination that the holocaust center did not constitute a "religious use;" and

WHEREAS, the applicant represents that the subject application is distinguishable from Yeshiva & Mesivta Toras Chaim, which involved a not-for profit corporation which operated a private school for Jewish children from nursery through eighth grade, which purchased a parcel of property for the purpose of creating "a center for the study of Nazi persecution known as the 'Holocaust'" Yeshiva & Mesivta Toras Chaim, 136 A.D.2d at 710; and

WHEREAS, in upholding the zoning board's determination that the holocaust center did not constitute a religious use and was, thus, not a permitted use at the proposed site, the court stated that

While recognizing that the courts of this State have been very flexible in their interpretation of religious uses under local zoning ordinances (citations omitted), the flexibility has been directed to ancillary or accessory functions of religious institutions *whose principal use is a place of worship*. (Emphasis added). Affiliation with or supervision by religious organizations does not, per se, transform institutions into religious ones. "It is the proposed use of the land, not the religious nature of the organization, which must control" (citations omitted) Yeshiva & Mesivta Toras Chaim, 136 A.D.2d at 711; and

WHEREAS, based upon the above, the applicant states that the subject Holocaust Center can be distinguished from the facts of Yeshiva & Mesivta Toras Chaim on two key grounds: (1) a central issue in that case was that the proposed holocaust center was not permitted by the relevant zoning district regulations unless it was deemed to be a religious or educational use, and the subject Holocaust Center poses no such issue as it would be permitted in the subject R6 district as-of-right; and (2) the court expressly

limited its holding by noting that greater discretion may be exercised by zoning boards in interpreting what constitutes religious uses when such uses occur in buildings whose principal use is a house of worship, such as the subject case where the primary use of the building is for the Synagogue; and

WHEREAS, the applicant states that the Holocaust Center is ancillary or accessory to the primary use of the site for the Synagogue, pursuant to both the definition of "accessory use" set forth in ZR § 12-10, and in light of the analysis of accessory uses to religious institutions pursuant to New York case law; and

WHEREAS, the applicant notes that ZR § 12-10 defines an "accessory use" as a use: (1) conducted on the same zoning lot as the principal use to which it is related; (2) which is clearly incidental to, and customarily found in connection with, such principal use; and (3) which is either in the same ownership as such principal use, or is operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use; and

WHEREAS, the applicant states that the Holocaust Center will be located within the Synagogue building and therefore clearly satisfies the first prong of the definition of "accessory use;" and

WHEREAS, as to the second prong of the definition of "accessory use," the applicant represents that the Holocaust Center is clearly incidental to, and customarily found in connection with the Synagogue in that, as set forth in its mission statement, the Holocaust Center primarily serves as a place of education pursuant to religious principles, and that the use of synagogues for purposes of education is well-documented; and

WHEREAS, specifically, the applicant likens the Holocaust Center to a "Beit Midrash," which is a house of learning which encourages the expansion of religious knowledge through discussion and debate, and which the applicant represents is commonly found in connection with a synagogue; and

WHEREAS, the applicant also submitted a copy of the Synagogue's by-laws, which states that in order to achieve its objectives, "the Organization shall establish, maintain and operate facilities, projects and programs, including educational, charitable and religious activities, in accordance with the Torah principles of the Organization;" and

WHEREAS, the applicant states that the primary purpose of the Holocaust Center is to serve as an education center "within the framework fashioned by the precepts of Halacha as well as well as the ethos of the Torah Hashkafa," and therefore it is entirely within the framework of the central purposes of the Synagogue as described in its by-laws, and is the type of educational activity that should be considered clearly incidental to and customarily found in connection with the Synagogue; and

WHEREAS, the applicant represents that the Holocaust Center also satisfies the third prong of the

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definition of “accessory use,” as the Holocaust Center is maintained on the same zoning lot substantially for the benefit of the congregation of the Synagogue; and

WHEREAS, specifically, the applicant states that the Holocaust Center offers lectures attended by up to 450 people, and typically 30 to 50 percent of attendees at these lectures are members of the Synagogue; and

WHEREAS, the applicant represents that the fact that the executive leadership of the Holocaust Center and the Synagogue contain significant crossover, as several Synagogue board members are members of the Holocaust Center’s executive board, serves as further evidence that the Holocaust Center is maintained substantially for the benefit of the Synagogue; and

WHEREAS, the applicant also contends that New York case law indicates a deferential and broad interpretation of accessory uses for religious institutions; and

WHEREAS, the applicant cites to Lawrence School Corporation v. Lewis, 174 A.D.2d, 42, 46 (2<sup>nd</sup> Dept. 1992) for the proposition that “religious institutions are generally entitled to locate on their property facilities for such social, recreational, athletic and other accessory uses as are reasonably associated with their educational or religious purposes;” and

WHEREAS, the Board notes that the holocaust center in Yeshiva & Mesivta Toras Chaim was not located in New York City and was not subject to the Zoning Resolution and agrees that it can otherwise be distinguished from the proposed Holocaust Center on its facts; and

WHEREAS, the Board finds that the principal use of the subject building is for the Synagogue, and based on the unique circumstances of the subject case, including the religious mission of the Holocaust Center, its location within the same building as the Synagogue, and the significant interrelation between the Synagogue and the Holocaust Center as evidenced by the fact that several board members of the Synagogue serve on the executive Board of the Holocaust Center and the anticipation that the Synagogue congregation will comprise a large portion of the attendees at the Holocaust Center’s functions, the Holocaust Center is entitled to religious deference; and

WHEREAS, based upon the above, the Board finds that both the programmatic needs of the Synagogue and the physical constraints of the existing building, as set forth by the evidence provided in the record, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed

use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the enlargement of the existing building is entirely as-of-right, with the exception of the non-compliant lot coverage and rear yard; and

WHEREAS, the applicant states that there are a number of buildings in the surrounding area which are larger than the proposed building, including a five-story 23,000 sq. ft. building less than 50 feet to the east of the site on 50<sup>th</sup> Street, and a six-story 70,000 sq. ft. multiple dwelling less than 150 feet to the west of the site on 49<sup>th</sup> Street; and

WHEREAS, the applicant notes that the existing building already has a complying encroachment into the rear yard of the site at the first floor, which is a permitted obstruction up to a height of 23 feet, and the proposed variance merely seeks to match the floor plate of the first floor at the above floors (with a ten-ft. setback at the rear of the fourth floor); and

WHEREAS, the applicant further notes that the requested lot coverage and rear yard waivers would be required even if the subject application merely sought to legalize the extension of the women’s balcony at the second floor; the proposed enlargement of the third floor and addition of a fourth floor merely extends the rear yard encroachment at the second floor to the third floor and a portion of the fourth floor (which is set back 10’-0”) to accommodate the proposed Holocaust Center; and

WHEREAS, the applicant states that the proposed enlargement matches the design of the existing building and will therefore be compatible with the surrounding neighborhood; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal only requires waivers for lot coverage and rear yard above the first floor and otherwise complies with all zoning district regulations; and

WHEREAS, as noted above, in response to concerns raised by the Board, the applicant revised its proposal during the hearing process to provide a ten-ft. setback at the rear of the fourth floor; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed both to meet its programmatic needs and to construct an enlargement that is compatible with the character of the neighborhood; and

WHEREAS, the Board has determined that the

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evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA034K, dated April 9, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R6 zoning district, the enlargement of the third story of an existing synagogue building and addition of a fourth story to be occupied by a Holocaust education center, and the legalization of the enlargement of a women's balcony on the second story, which does not comply with rear yard or lot coverage requirements for community facilities, contrary to ZR §§ 24-36 and 24-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 17, 2012" – Thirteen (13) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 21,334 sq. ft. (3.55 FAR); a total height of 60'-0"; lot coverage of 99.26 percent; and a rear yard with a minimum depth of approximately 0'-2", as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4) and Holocaust education center;

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by

the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 48-12-BZ

### CEQR #12-BSA-083M

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for IGS Realty Co., owner.

SUBJECT – Application March 5, 2012 – Variance (§72-21) to permit the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center regulations (§121-11). C6-4 (GC, P2) zoning district.

PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 760, Lot 63, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Elizabeth Safien.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 7, 2012, acting on Department of Buildings Application No. 120929905, reads in pertinent part:

Proposed use group #6- 'Office' is not permitted as per ZR 121-11/ZR121-113. Provide approval from Board of Standards and Appeals for proposed work; and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C6-4 zoning district within the P2 Preservation Area of the Garment Center Special District, the legalization of office use (Use Group 6) within a fourteen-story commercial building, contrary to ZR §§ 121-11 and 121-113; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in the *City Record*, with continued hearings on July 17, 2012 and August 21, 2012, and then to decision on September 11, 2012; and

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, initially recommended disapproval of this application unless the applicant agreed to provide space for non-profit organizations within the building; and

WHEREAS, in response to the request of the Community Board, the applicant agreed to set aside space in the building for a non-profit organization; and

WHEREAS, the Community Board also requests that the following uses be prohibited from operating in the subject building: (1) adult establishments; (2) banks; (3) banquet halls; (4) catering establishments; (5) drug stores; and (6) eating or drinking establishments, except restaurants with a capacity of 200 persons or less; and

WHEREAS, the subject site is located on the south side of West 37th Street, between Eighth Avenue and Ninth Avenue, in a C6-4 zoning district within the P2 Preservation Area of the Garment Center Special District; and

WHEREAS, the site has approximately 100 feet of frontage on West 37th Street, a depth of 98 feet, and a lot area of 9,875 sq. ft.; and

WHEREAS, the site is occupied by a 14-story commercial building with a floor area of 112,088 sq. ft. (11.35 FAR) with office uses on all floors; and

WHEREAS, the applicant proposes to legalize floors two through fourteen for Use Group 6 office use; and

WHEREAS, because Use Group 6 office uses are not permitted within buildings greater than 70,000 sq. ft. within the P2 Preservation Area of the Garment Center Special District, the subject use variance is requested; and

WHEREAS, the applicant states the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: the physical constraints of the building which render it obsolete for conforming uses; and

WHEREAS, the applicant represents that the building is constrained by the following physical conditions which render it obsolete for conforming uses: (1) limited and varying size of floor plates; (2) low floor-to-ceiling heights; (3) no off-street loading; and (4) small freight elevators; and

WHEREAS, as to the floor plates of the building, the applicant represents that the above-mentioned physical constraints of the subject building render it obsolete for conforming uses; and

WHEREAS, the applicant states that the floor plates narrow from 8,800 sq. ft. on floors two through six to 5,500 sq. ft. on the 14<sup>th</sup> floor; and

WHEREAS, the applicant represents that the reduction in the size of the floor plates on the upper floors, due to a series of setbacks, limits the viability of the building for production type uses; and

WHEREAS, specifically, the applicant states that the 5,500 sq. ft. floor plate at the 14<sup>th</sup> floor includes the building

core (elevators, stairs, shafts), which does not factor into production space and is located centrally in the floor plates thereby significantly disrupting the already limited space; and

WHEREAS, the applicant states that the floor-to-ceiling height on the upper floors is ten feet, while modern manufacturing uses typically have floor-to-ceiling heights of 25 feet or more; and

WHEREAS, the applicant represents that the lack of off-street loading would force as-of-right tenants to use the sidewalk which would conflict with residential and hotel uses on the street; and

WHEREAS, the applicant states that the freight elevators are small, with dimensions of only 7'-0" by 5'-0", and they are insufficient to carry heavy loads, with a weight capacity of only 3,000 pounds; and

WHEREAS, the applicant states that the building has been listed with real estate brokers to attract as-of-right uses, but there has been no interest in conforming use of the building; and

WHEREAS, as to the uniqueness of the site, the applicant analyzed all of the buildings within the P2 Preservation Area (amounting to approximately 75 buildings) and found 23 that are used for industrial uses; and

WHEREAS, the Board notes that of the 23 buildings with industrial uses, ten contain less than 70,000 sq. ft. of floor area and therefore may be used as-of-right for non-preservation area restricted uses; and

WHEREAS, of the remaining 13 buildings, four are larger than the subject building and have correspondingly larger floor plates; one is much smaller and therefore not comparable, and one is already authorized to be converted to residential use under the City Planning Commission Approval; and

WHEREAS, accordingly, there are only six other buildings within the preservation area that are comparable to the subject building in terms of lot area and building square footage, and which have certificates of occupancy for factory and/or showroom use and range in height between eight and 16 stories; and

WHEREAS, the applicant represents that only one of these six buildings has residential uses on all three sides, similar to the subject site which further restricts the marketability of industrial uses because of potential incompatibility; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a conforming building with ground floor retail space and manufacturing/showroom use above; (2) a lesser variance scenario with conforming uses located on floors two through six; and (3) the proposed office building; and

WHEREAS, the study concluded that neither the conforming scenario nor the lesser variance scenario would

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result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject building's unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant notes that the street in which the site is located does not have a manufacturing presence; and

WHEREAS, the applicant notes that the proposed office use is more appropriate with the existing surrounding residential and hotel uses than manufacturing use; and

WHEREAS, the applicant states that many of the office uses in the subject building support the garment center manufacturing and showroom uses found in the more appropriate buildings located along the fashion avenue; and

WHEREAS, the applicant further states that there is minimal truck traffic on the subject street, and that the office use in the subject building presents a stable yet low impact use that has presented no significant issues in the surrounding area to date; and

WHEREAS, the applicant represents that use of the building for a conforming manufacturing use would actually be less compatible with the surrounding neighborhood, as the associated noises, fumes and movement of goods would be at odds with the adjacent residential neighbors directly to the east, west and north of the site; and

WHEREAS, the applicant further represents that, due to the lack of any off-street loading capabilities, an as-of-right production business would have to utilize the public street and sidewalk for loading purposes, creating innate conflicts with the residential and hotel occupants surrounding the site; and

WHEREAS, the Board notes that the applicant has agreed to the Community Board conditions to limit certain uses including adult establishments, banks, banquet halls, catering establishments, drug stores, and eating or drinking establishment, except restaurants with a capacity of 200 persons or less, and will also rent space to a non-profit/charity group; and

WHEREAS, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, as noted above, the applicant analyzed a lesser variance scenario consisting of as of right uses located on floors two through six and determined it was not feasible; and

WHEREAS, accordingly, the Board finds that this

proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA083M, dated December 9, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in a C6-4 zoning district within the P2 Preservation Area of the Garment Center Special District, the legalization of office use (Use Group 6) on floors two through fourteen within a fourteen-story commercial building, contrary to ZR §§ 121-11 and 121-113; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 26, 2012"—six (6) sheets; and *on further condition*:

THAT the building will not be occupied by the following uses: adult establishments; banks; banquet halls; catering establishments; drug stores; eating or drinking establishments, except restaurants with a capacity of 200 persons or less;

THAT the applicant will reserve at least one space within the building to be rented to a non-profit organization;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved



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only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 65-12-BZ

### CEQR #12-BSA-097K

APPLICANT – Lewis E. Garfinkel, for Yisroel Brodt, owner.

SUBJECT – Application March 20, 2012 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1140 East 28<sup>th</sup> Street, west side of East 28<sup>th</sup> Street, 313’ south of Avenue K, Block 7627, Lot 62, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Adam Rothkrug and Lewis E. Garfinkel.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 2, 2012, acting on Department of Buildings Application No. 320432741, reads in pertinent part:

- 1- Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%
  - 2- Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%
  - 3- Plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required minimum 5’-0”
  - 4- Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;
- and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication

in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 28<sup>th</sup> Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,667 sq. ft., and is occupied by a single-family home with a floor area of 1,711 sq. ft. (0.64 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,711 sq. ft. (0.64 FAR) to 2,654 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,333.5 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 54 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a minimum width of 2’-9” and to maintain the existing side yard along the northern lot line with a width of 5’-10” (two side yards with minimum widths of 5’-0” each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR

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§§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 20, 2012"-(5) sheets and "August 1, 2012"-(6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,654 sq. ft. (1.0 FAR); a minimum open space ratio of 54 percent; a side yard with a minimum width of 2'-9" along the southern lot line; a side yard with a width of 5'-10" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 68-12-BZ

### CEQR #12-BSA--100Q

APPLICANT – Vassalotti Associates Architects, LLP, for Rockaway Boulevard Associates, LLC, owner.

SUBJECT – Application March 21, 2012 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on December 22, 1999; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 89-15 Rockaway Boulevard, northwest corner of the intersection of Rockaway Boulevard and 90<sup>th</sup> Street, Block 9093, Lot 13, Borough of Queens.

### COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 28, 2012, acting on Department of Buildings Application No. 420534639, reads in pertinent part:

Proposed extension of term for variance beyond 12/22/99 is contrary to Board of Standards and Appeals BZ # 865-55 Bul # 45 Vol. LXIV; and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement, an extension of term, and an extension of time to obtain a certificate of occupancy for a prior Board approval of an automobile service station with accessory uses (Use Group 16) in an R5 zoning district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, with continued hearings on July 10, 2012 and August 7, 2012, and then to decision on September 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the northwest corner of Rockaway Boulevard and 90<sup>th</sup> Street, within an R5 zoning district; and

WHEREAS, the subject site is a triangularly-shaped lot with 160 feet of frontage along Rockaway Boulevard, 160 feet of frontage along 90<sup>th</sup> Street, and a total lot area of 12,213 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956 when, under BSA Cal. No. 865-55-BZ, the Board granted a variance to permit the site to be occupied as a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on January 22, 1992, the Board granted a ten-year extension of term, which expired on December 22, 1999; and

WHEREAS, the term of the variance has not been extended since its expiration on December 22, 1999; and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term and extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, at hearing, the Board directed the applicant to remove the cars listed for sale from the site and to provide landscaping on the site; and

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WHEREAS, in response, the applicant submitted photographs and revised plans reflecting the removal of the cars for sale and the addition of landscaped areas along the western lot line and around the identification sign post area and the addition of raised planters around the pump island areas; and

WHEREAS, based upon the above, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit the reinstatement, extension of term, and extension of time to obtain a certificate of occupancy for a prior Board approval of an automobile service station with accessory uses (UG 16), *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received March 21, 2012"-(1) sheet and "July 31, 2012"-(1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on September 11, 2022;

THAT the lot will be kept free of debris and graffiti;

THAT all signage will comply with C1 district regulations;

THAT parking on the site will be limited to vehicles awaiting service;

THAT landscaping will be maintained in accordance with the BSA-approved plans;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy be obtained by September 11, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 79-12-BZ

### CEQR #12-BSA-110M

APPLICANT – Jeri Fogel, for Impala Retail Owner LLC, owner; House of Jai, lessee.

SUBJECT – Application April 4, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*House of Jai*). C1-9 zoning district.

PREMISES AFFECTED – 1456 First Avenue, east side of First Avenue, 50' south of corner of 76<sup>th</sup> Street, Block 1470, Lot 1002, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Kelly Shaw.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 22, 2012, acting on Department of Buildings Application No. 120855039, reads in pertinent part:

Proposed 'Physical Culture Establishment' in a C1-9/R8B zoning district is not permitted As-of-Right to section ZR 32-10 and a special permit by the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor and cellar of a 31-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in *The City Record*, and then to decision on September 11, 2012; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of First Avenue, between East 75<sup>th</sup> Street and East 76<sup>th</sup> Street, partially within a C1-9 zoning district and partially within an R8B zoning district; and

WHEREAS, the site is an irregularly-shaped lot with 80 feet of frontage on First Avenue and a total lot area of 21,820 sq. ft.; and

WHEREAS, the site is occupied by a 31-story mixed-use commercial/residential building; and

WHEREAS, the proposed PCE will occupy 2,105 sq. ft. of floor area on a portion of the first floor, with an additional 1,619 sq. ft. of floor space on a portion of the cellar level;

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and

WHEREAS, the Board notes that the proposed PCE will be located entirely within the C1-9 portion of the site; and

WHEREAS, the PCE will be operated as House of Jai; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant notes that the PCE will incorporate the following sound attenuation measures to comply with the NYC Noise Control Code and will have a STC rating of no less than 50, ensuring that the sound level will be less than 45 dBA in the residential units of the subject building: 1) tectum, sound-absorbing, acoustic ceiling panels, covering approximately 70 percent of the project area throughout the PCE; (2) acoustic batt insulation in all partitions; (3) vinyl flooring, covering approximately 35 percent of the project area throughout the PCE; and 4) ductwork that is acoustically lined for the first 15 feet from the commercial unit; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA110M, dated March 30, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and

Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a PCE on a portion of the first floor and cellar of a 31-story mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 20, 2012" – Four (4) sheets, and *on further condition*:

THAT the term of this grant will expire on September 11, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the sound attenuation measures will be provided as indicated on the BSA-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 160-12-BZ

### CEQR #12-BSA-139X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CP Associaes LLC c/o Jeffrey Mgmt., owner; Blink 820 Concourse Inc., lessee.

SUBJECT – Application May 25, 2012 – Special Permit to allow a physical culture establishment (*Blink*) within existing commercial building. C8-3 zoning district.

PREMISES AFFECTED – 820 Concourse Village West, east side of Concourse Village West, 312.29' south of intersection of Concourse Village West and East 161<sup>st</sup> Street, Block 2443, Lot 91, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Bronx Borough Commissioner, dated May 16, 2012, acting on Department of Buildings Application No. 210085325, reads in pertinent part:

Proposed physical culture establishment in zoning district C8-3 is not permitted as of right and requires a special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-3 zoning district, the operation of a physical culture establishment (PCE) on portions of the sub-cellar, cellar, and first floor of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on September 11, 2012; and

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, the subject site is located on the east side of Concourse Village West approximately 312.29 feet south of its intersection with East 161<sup>st</sup> Street, within a C8-3 zoning district; and

WHEREAS, the site has approximately 190 feet of frontage on Concourse Village West, and a total lot area of 13,398 sq. ft.; and

WHEREAS, the subject tax lot is part of a larger zoning lot comprising the Concourse Village Shopping Center that extends over tax lots 90, 91, and 94 in Block 2443 for an area of approximately 400,000 sq. ft.; and

WHEREAS, the proposed PCE will occupy 4,675 sq. ft.

of floor area on a portion of the first floor, with an additional 13,335 sq. ft. of floor space located in portions of the cellar and sub-cellar; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Saturday, from 5:30 a.m. to 11:00 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA139X, dated May 24, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental

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# MINUTES

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Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-3 zoning district, the operation of a PCE on portions of the sub-cellar, cellar, and first floor of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 25, 2012" - Four (4) sheets and "Received July 30, 2012" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on September 11, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the site will be maintained free of graffiti;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 11, 2012.

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## 113-11-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Patrick's Home for the Aged and Infirm, owners.

SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patrick's Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.

PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.

### COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Neil Weisbard.

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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## 147-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

### COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jordan Most, Arthur Paris and Consuelo Paris Celestine.

For Opposition: Jeffrey Chester.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

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## 156-11-BZ

APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon's Church owners.

SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon's Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-2), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district.

PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165<sup>th</sup> Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.

### COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## 187-11-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for Sandford Realty, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES – None.

# MINUTES

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for deferred decision.

## **2-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Tehjila Development, LLC, owner.

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29' south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

### **COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

## **10-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.

SUBJECT – Application January 18, 2012– Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling, contrary to front yard (§23-45) and side yard (§23-461) regulations. R5 zoning district.

PREMISES AFFECTED – 114-01 95<sup>th</sup> Avenue, northeast corner of 95<sup>th</sup> Avenue and 114<sup>th</sup> Street, Block 9400, Lot 37, Borough of Queens.

### **COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 25, 2012, at 1:30 P.M., for decision, hearing closed.

## **11-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application November 17, 2012 – Special Permit (§73-622) for the legalization of an enlargement to

an existing single-family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 3599 Bedford Avenue, East side of Bedford Avenue, between Avenue N and Avenue O, Borough of Brooklyn, Block 7679, Lot 13, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lyra J. Atman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

## **12-12-BZ & 110-12-A**

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Deirdre A. Carson.

For Opposition: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for decision, hearing closed.

## **23-12-BZ**

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

APPEARANCES –

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# MINUTES

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For Applicant: Chris Wright.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for deferred decision.

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## 76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #15K

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Laid over to October 16, 2012 at 1:30 P.M., for adjourned hearing.

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## 80-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts.

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Chris Rizzo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for decision, hearing closed.

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## 82-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2011 East 22<sup>nd</sup> Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of

Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Stanley Rosow and Alice Rosolo.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

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## 86-12-BZ

APPLICANT – Jeremiah H. Candreva, Esq., Troutman Sanders LLP, for Parkwood Realty Associates, LLC c/o Park It Management Co., owner.

SUBJECT – Application April 9, 2012 – Special Permit (§73-63) to allow for the residential enlargement of an existing commercial building above the maximum permitted floor area (by 1,366 square feet). C2-5/R8B zoning district regulations.

PREMISES AFFECTED – 158 West 83<sup>rd</sup> Street, western boundary of the site is 150’ east of Amsterdam Avenue on West 83<sup>rd</sup> Street, Block 1213, Lot 58, Borough of Manhattan.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Jeremiah Candreva.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.

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## 141-12-BZ

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc., owner.

SUBJECT – Application May 3, 2012 – Re-Instatement (§§11-411 & 11-412) of a previously approved variance which permitted retail (UG 6) in a residential district which expired on October 14, 1989; amendment to permit the installation of awnings/signage, and changes to the interior layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164<sup>th</sup> Street, southwest corner of 65<sup>th</sup> Street, Block 6762, Lot 53, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Adam Rothrug.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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## **189-12-BZ**

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.

### **COMMUNITY BOARD #2BK**

APPEARANCES –

For Applicant: Michael Sillerman, Gene Kaufman, Jack Freeman, Martin Taub, Cario Scissura, Brigit Pinnell, A. Raskin, Mike Tuiach, Glenn Marfman, Katie Lyon, Tom Conoscerti and Joseph Steinberg.

For Opposition: Albert K. Butzel, Stephen Lavin, Jane McGroarty, Richard F. Ziegler, Carolyn L. Ziegler, Margaret E. O’Neal, Waldo C. Falkener, Jr., Katherine B. Desai, Lisa Donnesow, Maritza Shelley, Elizabeth Beitg and Rohit Desai.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

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## **198-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.

SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the conversion and enlargement of existing buildings to contain UG 6 retail and UG 2 residential uses, contrary to floor area, lot coverage (§23-145), rear yard (§23-47), rear yard setback (§23-633(b), height (§§23-691, 99-054(b))), streetwall (§23-692(c), 99-051(a)), inner court (§23-851), window-to-lot-line (§23-861), and commercial use (§32-422) regulations. C5-1(MP), R8B zoning district.

PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Block 1389, Lot 25, Borough of Manhattan.

### **COMMUNITY BOARD #8M**

APPEARANCES –

For Applicant: Gary Tarnoff, Chris Couran and Robert Vonaincken.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on July 17, 2012, under Calendar No. 163-04-BZ and printed in Volume 97, Bulletin No. 30, is hereby corrected to read as follows:

### 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application April 30, 2012 – Extension of Time to obtain a Certificate of Occupancy of a special permit (§73-36) for the operation of a physical culture establishment (*Crunch Fitness*) which expired on April 24, 2011; Waiver of the Rules. R7A (C2-4) zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest corner of intersection of Fulton Street and St. Felix Street, Block 2096, Lot 66, 69, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown .....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, which expired on April 24, 2011; and

WHEREAS, a public hearing was held on this application on June 12, 2012 after due notice by publication in *The City Record*, and then to decision on July 17, 2012; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the northwest corner of Fulton Street and St. Felix Street and is located within a C2-4 (R6) zoning district; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the site is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor of both buildings and the mezzanine of the two-story building; and

WHEREAS, on July 12, 2005, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of the PCE within a portion of the existing two-story building for a term of ten years to expire on July 12, 2015; and

WHEREAS, most recently, on April 24, 2007, the Board granted an amendment to permit the enlargement of the first floor by adding 2,775 sq. ft. of floor area on the first floor within the adjacent one-story building, and to extend the hours of operation to 24 hours, daily; and

WHEREAS, substantial construction was to be completed and a certificate of occupancy obtained by April 24, 2011, in accordance with ZR § 73-70; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that, although work is substantially completed, a certificate of occupancy has not been obtained due to problems with contractors and a recent audit of the application affecting Lot 66; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time is appropriate, with the conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 12, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on July 17, 2013; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all massages must be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a certificate of occupancy must be obtained by July 17, 2013;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application Nos. 302207403 and 301441296)

Adopted by the Board of Standards and Appeals, July 17, 2012.

**\*The resolution has been revised to correct the DOB Application No. which read: 300326895; now reads: Application Nos. 302207403 and 301441296. Corrected in Bulletin Nos. 36-38, Vol. 97, dated September 20, 2012.**

# MINUTES

## \*Correction

This resolution adopted on August 21, 2012, under Calendar No. 155-12-BZY and printed in Volume 97, Bulletin No. 35, is hereby corrected to read as follows:

### 155-12-BZY

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 511 Property LLC, owner.

SUBJECT – Application May 11, 2012 – Extension of time (§11-332) to complete construction of a minor development commenced prior to a zoning text amendment related to parking. C1-7(A) Special Hudson Zoning District.

PREMISES AFFECTED – 511 Ninth Avenue, southwest corner of Ninth Avenue and West 39<sup>th</sup> Street (block bounded by West 38<sup>th</sup> Street and 10<sup>th</sup> Avenue), Block 736, Lot 33, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Robin Kramer.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on August 21, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, the subject site is located on the southwest corner of Ninth Avenue and West 39<sup>th</sup> Street, in a C1-7A zoning district within Subarea D5 of the Hell’s Kitchen Subdistrict of the Special Hudson Yards District; and

WHEREAS, the site has a total lot area of 22,732 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 12-story mixed-use residential/ commercial/community facility building (the “Building”); and

WHEREAS, the Building is proposed to have a floor area of 126,861 sq. ft. (5.58 FAR), with an accessory parking garage for 32 cars; and

WHEREAS, the Building complies with the former zoning parameters of the Special Hudson Yards District; and

WHEREAS, however, on April 14, 2010 (hereinafter, the “Enactment Date”), the City Council voted to enact the Hudson Yards Parking Text Amendment, which does not permit new parking spaces at the subject site unless there is a decrease in the number of parking spaces in Hudson Yards;

and

WHEREAS, accordingly, the Building does not comply with the current zoning because the proposed accessory parking spaces are not permitted; and

WHEREAS, on March 10, 2008, New Building Permit No. 104576246-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the proposed 12-story mixed-use building with an accessory parking garage for 32 cars; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall 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.”; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “[F]or the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and

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specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.";

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated June 27, 2012, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of April 14, 2012 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the excavation, dewatering, concrete foundations, pits, basement walls and waterproofing, and construction of a portion of the required Con Edison vaults; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; applications and certifications for payments; accounting tables; and an affidavit from the construction manager; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$8,879,855, or 18 percent, out of the approximately

\$50,369,810 cost to complete; and

WHEREAS, as noted above, the applicant has submitted applications and certifications for payments, accounting tables; and an affidavit from the construction manager; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104576246-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 21, 2014.

Adopted by the Board of Standards and Appeals, August 21, 2012.

**\*The resolution has been corrected to indicate that APPEARANCES – For Applicant was “Robin Kramer” Corrected in Bulletin Nos. 36-38, Vol. 97, dated September 20, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 97, Nos. 39-40

October 3, 2012

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### DIRECTORY

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**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

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**277-12-BZ**

1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Road., Block 4226, Lot(s) 16, Borough of **Bronx, Community Board: 11**. Special permit (§73-49) to permit proposed roof top parking. M1-1 zoning district. M1-1 district.  
-----

**278-12-BZ**

3143 Atlantic Avenue, northwest corner of Atlantic Avenue between Hale Ave. and Norwood Ave., Block 3960, Lot(s) 58, Borough of **Brooklyn, Community Board: 5**. Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district to permit the development of a proposed eating and drinking establishment (McDonald's) with accessory drive thru. C8-2 and R5 zoning district. C8-2 & R5 district.  
-----

**279-12-BZ**

27-22/26 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue., Block 4292, Lot(s) 12, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit a Use Group 6 bank in a residential zone, contrary to ZR 22-00. R4/R5B zoning district. R4/R5B district.  
-----

**280-12-BZ**

1249 East 28th Street, East side of 28th Street, Block 7646, Lot(s) 26, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family contrary to floor area, open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district. R2 district.  
-----

**281-12-BZ**

1995 East 14th Street, northeast corner of East 14th Street and Avenue T., Block 7293, Lot(s) 48, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit a straight-line and vertical enlargement of the first and second floors as well as the attic of an existing two story and attic level use group 2 detached single family home contrary to front yard (§23-45) requirements. R5 zoning district. R5 district.  
-----

**282-12-BZ**

1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot(s) 48, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing two story and attic level detached single family home contrary to the side yard (ZR§23-461) requirements. R5 zoning district. R5 district.  
-----

**283-12-BZ**

440 Broadway, between Howard Street and Grand Street, Block 232, Lot(s) 3, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district. M1-5B district.  
-----

**284-12-BZ**

2047 East 3rd Street, eastern side of East 3rd Street, between Avenue S and Avenue T., Block 7106, Lot(s) 122, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area (ZR 23-141) and perimeter wall height (ZR 23-631) requirements. R2X (OP) zoning district. R2X district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**OCTOBER 17, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a special hearing, Wednesday morning, October 17, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL HEARING**

**117-12-A thru 135-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 and R-4 Zoning Districts.

PREMISES AFFECTED –

Van Wyck Expressway & Atlantic Avenue, Block 9989, Lot 70

BQE & Queens Boulevard

BQE & 31<sup>st</sup> Street, Block 1137, Lot 22

BQE & 31<sup>st</sup> Avenue, Block 1137, Lot 22

BQE & 32<sup>nd</sup> Avenue

BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1

Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1

Northern Boulevard & BQE, Block 1163, Lot 1

Queens Boulevard & BQE, Block 1343, Lot 129 and 139

Queens Boulevard & 74<sup>th</sup> Street, Block 2448, Lot 213

Skillman Avenue between 28<sup>th</sup> & 29<sup>th</sup> Street, Block 72, Lot 250

Van Wyck Expressway north of Roosevelt Avenue, Block 1833, Lot 230

Woodhaven Boulevard north of Elliot Avenue, Block 3101, Lot 9

Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4

Borough of Queens

**COMMUNITY BOARDS #12, 2, 1, 4, 6, 5Q**

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**171-12-A thru 180-12-A**

APPLICANT – Stroock, Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – CSX and Amtrak Corporate Office.

SUBJECT – Application June 8, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3-2, M1-2, C8-1 and M1-1 Zoning Districts.

PREMISES AFFECTED –

Cross Bronx Expressway east of Sheridan

Cross Bronx Expressway & Bronx River, Lot 3904, Lot 1

Cross Bronx Expressway east of Bronx River & Sheridan, Block 3904, Lot 1

I-95 & Hutchinson Parkway, Block 4411, Lot 1

I-95 & Hutchinson Parkway, Block 4411, Lot 1

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Bruckner Expressway north of 156<sup>th</sup> Street, Block 2730, Lot 101

Major Deegan Expressway south of Van Cortland, Block 3269, Lot 70

Borough of Bronx.

**COMMUNITY BOARDS #9, 6, 11, 2, 8BX**

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**273-12-A & 274-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – CSX.

SUBJECT – Application September 6, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1, M1-1 Zoning Districts.

PREMISES AFFECTED – Major Deegan @ 167<sup>th</sup> Street, Block 2539, Lot 502, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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**182-12-A**

APPLICANT – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC, lessee.

OWNER OF PREMISES – Metropolitan Transportation Authority.

SUBJECT – Application June 11, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use as an advertising sign. M1-1 Zoning District.

PREMISES AFFECTED – Major Deegan Expressway and 161<sup>st</sup> Street, located on MTA Railroad Property, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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**183-12-A thru 188-12-A**

APPLICANT – Herrick Feinstein, LLP, for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA & Department Ports of Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 and M1-1 Zoning Districts.

PREMISES AFFECTED – 476, 477, 475 Exterior Street and Major Deegan, Block 02349, Lot 12, Borough of



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# CALENDAR

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Bronx.

## COMMUNITY BOARD #1BX

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**OCTOBER 23, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 23, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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### SPECIAL ORDER CALENDAR

#### 5-96-BZ

APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.

SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' west of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.

#### COMMUNITY BOARD #8BK

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#### 96-00-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 4 East 77<sup>th</sup> Street Company, owner.

SUBJECT – Application July 23, 2012 – Extension of Term (§11-411) of a previously granted variance which permitted the use of a portion of the second floor in an existing five story building as an Art Gallery which expired on August 8, 2010; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. R8B/R10 zoning district.

PREMISES AFFECTED – 4 East 77<sup>th</sup> Street, south side of East 77<sup>th</sup> Street, between Fifth and Madison Avenues, Block 1391, Lot 69, Borough of Manhattan.

#### COMMUNITY BOARD #2M

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#### 209-04-BZ

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application August 14, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use in an M2-1 zoning district, which expired on July 19, 2012.

PREMISES AFFECTED – 109-09 15<sup>th</sup> Avenue, corner lot of 15<sup>th</sup> Avenue and 110<sup>th</sup> Street. Block 4044, Lot 60. Borough of Queens.

## COMMUNITY BOARD #7Q

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#### 143-07-BZ

APPLICANT – Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application July 16, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the construction of a three-story and cellar synagogue, religious pre-school and Mikvah which expired on July 22, 2012. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, northeast corner of Strickland Avenue and East 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD #18BK

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#### 197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – This application seeks to amend the previously approved BSA variance.

PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD #9BK

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### APPEALS CALENDAR

#### 114-12-A

APPLICANT – Leavitt, Kerson & Duane by Paul E. Kerson for Astoria Landing Inc., owner.

SUBJECT – Application April 24, 2012 – Appeal challenging Department of Buildings determination that the owner has failed to establish a legal non-conforming advertising sign in an residential zoning district.

PREMISES AFFECTED – 24-59 32<sup>nd</sup> Street, 32<sup>nd</sup> Street at Grand Central Parkway Service Road, Block 837, Lot 95, Borough of Queens.

#### COMMUNITY BOARD #

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#### 136-12-A

APPLICANT – Fried Frank, LLP for Van Wagner Communications, lessee.

OWNER OF PREMISES – Point 27 LLC.

SUBJECT – Application April 26, 2012 – Appeal from Department of Buildings determination that the owner has not established use as a non-conforming advertising sign in a residential district. R-4 Zoning District.

PREMISES AFFECTED – 37-27 Hunter's Point between Greenpoint Avenue and 38<sup>th</sup> Street, Block 234, Lot 31, Borough of Queens.

#### COMMUNITY BOARD #2Q

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# CALENDAR

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**OCTOBER 23, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 23, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**185-11-BZ**

APPLICANT – Eric Palatnik, P.C., for 2000 Stillwell Avenue, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the use of the premises as voluntary accessory parking for the adjacent as for right retail development (Walgreens), contrary to use regulations ZR §22-00. R5 zoning district.

PREMISES AFFECTED – 2538 85<sup>th</sup> Street, north intersection of 86<sup>th</sup> Street and Stilwell Avenue. Block 6860, Lot 21. Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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**63-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship, located within R2 zoning district, which is contrary to floor area, lot coverage, yard, parking, height, and setback requirements.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27<sup>th</sup> Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**72-12-BZ**

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to residential off-street parking requirements, residential floor area, open space, lot coverage, maximum base height and maximum building height regulations. R7A/C2-4 and R6B Zoning Districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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**150-12-BZ**

APPLICANT – Goldman Harris LLC, for Roseland/Stempel 21st Street, owner; TriCera Revolution, Inc., lessee.

SUBJECT – Application May 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment. C6-4A zoning district.

PREMISES AFFECTED – 39 West 21<sup>st</sup> Street, north side of West 21<sup>st</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues. Block 823, Lot 17. Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**165-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Sarah Weinberger and Moshe Weinberger, owner.

SUBJECT – Application June 4, 2012 – Special Permit (§73-622) for the enlargement and partial legalization of an existing single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (§23-47); R2 zoning district.

PREMISES AFFECTED – 1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M. Block 7640, Lot 82. Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, SEPTEMBER 25, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

### SPECIAL ORDER CALENDAR

#### 739-76-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside, lessee.

SUBJECT – Application June 1, 2012 – Extension of Term of a Special Permit (§73-35) for the continued operation of an amusement arcade (*Peter Pan Games*) which expired on April 10, 2012; Waiver of the Rules. C4-1 zoning district. PREMISES AFFECTED – 212-95 26<sup>th</sup> Avenue, 26<sup>th</sup> Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

#### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a special permit, which expired on April 10, 2012; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 7, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the northwest corner of the intersection at 26<sup>th</sup> Avenue and Bell Boulevard, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1977 when, under the subject calendar number, the Board granted an application pursuant to ZR § 73-35, to permit the conversion of a retail store in a shopping center to an amusement arcade for a term of one year; and

WHEREAS, on May 6, 1997, under the subject calendar number, the Board permitted the relocation of the arcade from

212-65 26<sup>th</sup> Avenue to 212-95 26<sup>th</sup> Avenue; and

WHEREAS, the grant was extended and amended at various other times; most recently on July 12, 2011 when the Board granted a one-year extension to the term of the special permit, to expire on April 10, 2012; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional year; and

WHEREAS, based upon the submitted evidence, the Board finds that the proposed extension of term is appropriate, with conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, said resolution having been adopted on February 8, 1977, as later amended, so that, as amended, this portion of the resolution shall read: “to grant a one-year extension of the term of the special permit, to expire on April 10, 2013; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, to expire on April 10, 2013;

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 the operation of the arcade at the subject premises shall comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 401710430)

Adopted by the Board of Standards and Appeals, September 25, 2012.

#### 365-79-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for 89-52 Queens LLC, owner.

SUBJECT – Application February 21, 2012 – Amendment of a variance (§72-21) which allowed a hospital to be built contrary to bulk regulations. The amendment would convert the hospital building to commercial, community facility and residential uses. R6/C1-2 zoning district.

PREMISES AFFECTED – 90-02 Queens Boulevard, Hoffman Drive and Queens Boulevard, block 2857, Lot 36, Borough of Queens.

#### COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath.

**ACTION OF THE BOARD** – Application granted on condition.

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# MINUTES

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## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening, and an amendment to permit the conversion and enlargement of a hospital building for mixed-use commercial/community facility/residential use; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 25, 2012; and

WHEREAS, a companion application for an adjacent site occupied by a parking garage and subject to a prior board variance under BSA Cal. No. 25-89-BZ was decided on the same date; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommended approval of this application; and

WHEREAS, the subject site is located on a through lot with frontage on Hoffman Drive and Queens Boulevard and at the intersection of 58<sup>th</sup> Avenue and Hoffman Drive within an R6 (C1-2) zoning district; and

WHEREAS, the site is occupied by a building built in 1947 for hospital use, most recently St. John's Queens Hospital; and

WHEREAS, on April 17, 1962, under BSA Cal. No. 52-62-BZ, the Board approved a variance for a six-story horizontal enlargement of the building, which did not provide the required open spaces and exceeded the permitted wall height; and

WHEREAS, on March 14, 1980, under the subject calendar number, the Board again approved a variance for the enlargement of the building, which did not comply with front yard, side yard, and sky exposure plane regulations; and

WHEREAS, the applicant states that the hospital has gone out of business and there was not any interest from other hospitals or medical providers to occupy the site and it has been vacant since early 2009; and

WHEREAS, the applicant states that due to the age of the building and a history of deferred maintenance during the hospital's decline, it was in poor condition and required significant remedial work including asbestos removal, environmental remediation, new windows, repair of leaks and other water conditions, a new roof, new elevators, a new sprinkler system, and a new façade; and

WHEREAS, the applicant now seeks to amend the 1980 variance to allow for the conversion of the building to a mixed-used commercial/community facility/residential building, including the modification of certain rooftop mechanical space for residential use; and

WHEREAS, DOB reviewed the proposal and noted that

the proposed uses do not comply with the prior Board approval and, due to the use change, the plans do not comply with side yard, rear yard equivalent, sky exposure plane, and outer court regulations; and

WHEREAS, the applicant states that a side yard would not be required however, since there is space between the building and the easterly lot line, a side yard with a width of 8'-0" is required; the applicant notes that no change is proposed to the side yard which will be maintained at widths ranging from 6'-9 1/2" to 24'-3 3/4", which averages 15'-5/8" and the degree of non-compliance will not be increased; and

WHEREAS, as to the rear yard, the applicant states that for commercial and community facility uses, a rear yard equivalent of 20'-0" facing the street on each side of the building or a 40'-0" open space midway on the lot is required; however, the requirement for residential use is either two 30'-0" open spaces or a 60'-0" area midway on the lot; and

WHEREAS, the applicant states that it does not intend to enlarge or construct anything new on the site, but rather to maintain the pre-existing condition, which does not comply with residential regulations; and

WHEREAS, as to the sky exposure plane, the applicant states that the 1980 approval addressed the sky exposure plane regulations for commercial and community facility use; however, since the building is being converted pursuant to the Quality Housing regulations, it does not comply with the sky exposure plane limitations for residential use; and

WHEREAS, as to the court, the applicant states that it is not possible to expand the outer court to create compliance without significant structural reconfiguration including the removal of sections of the exterior wall facing the outer court to a depth of at least 4'-6"; and

WHEREAS, the applicant represents that seven of the 32 units on each floor have some degree of non-compliance due to the existing dimensions of the outer court; and

WHEREAS, the applicant notes that the portions of the building fronting the insufficient outer court have historically been used for dwelling purposes, either by patients or hospital staff, and, thus, it does not propose to introduce dwelling rooms to this non-complying condition which has always existed; and

WHEREAS, the applicant represents that it does not require any MDL waivers; and

WHEREAS, the applicant states that the maximum allowable floor area is 323,900 sq. ft. and the total existing floor area is 212,935 sq. ft.; and

WHEREAS, the applicant states that the only change to the building envelope is to convert certain rooftop mechanical space and enclose other rooftop space to be occupied by residential use, which results in an increase in the floor area from 212,935 sq. ft. to 223,152 sq. ft.; and

WHEREAS, the applicant explained that the existing rooftop does not comply with the plans previously-approved by the Board due to portions of the mechanical space never being constructed and or being altered; and

WHEREAS, the applicant states that all three uses comply with floor area regulations: (1) 40,570 sq. ft. of

# MINUTES

commercial use (a maximum of 107,967 sq. ft. is permitted); (2) 34,473 sq. ft. of community facility use (a maximum of 53,983 sq. ft. is permitted); and (3) 148,109 sq. ft. of residential use (a maximum of 161,950 sq. ft. is permitted); and

WHEREAS, the proposed building will accommodate the following program: (1) commercial use in the basement and on the first floor; (2) community facility use on the second floor; (3) residential use on the third, fourth, fifth, sixth, and partial seventh (penthouse) floors; and

WHEREAS, the applicant notes that all three proposed uses are permitted by zoning district regulations; and

WHEREAS, the applicant states the neighboring uses include an abandoned gas station to the west and a Sears Auto Center to the east and that, otherwise, it is within a large commercial artery two blocks east of the entrance to the Long Island Expressway; and

WHEREAS, the applicant states that the proposed mixed-use of the building is compatible with the retail corridor of Queens Boulevard and the residential streets running off Hoffman Drive at the rear of the site; and

WHEREAS, the applicant states that it commissioned a traffic study and a parking demand study to assess the effect of the proposed change in use and found that there would not be any significant impact; and

WHEREAS, as addressed in the companion application, the garage approved under BSA Cal. No. 25-89-BZ provides 115 parking spaces for commercial use, 55 parking spaces for community facility use, and 120 parking spaces for residential use; and

WHEREAS, the applicant states that the 290 parking spaces in the companion garage will accommodate the parking demand at the site; and

WHEREAS, the applicant represents that at the time the building was constructed in 1947, there was not a requirement for parking; and

WHEREAS, accordingly, the applicant represents that the proposed conversion will not alter the essential character of the surrounding neighborhood; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 14, 1980, so that as amended this portion of the resolution shall read: "to permit the conversion from hospital (Use Group 4) use to mixed commercial (Use Group 6)/community facility (Use Group 4)/residential (Use Group 2) and to allow for the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received September 18, 2012- .... (16?) sheets and *on further condition*:

THAT the building parameters will be: a total floor area of 223,152 sq. ft.; a commercial floor area of 40,570 sq. ft., a community facility floor area of 34,473 sq. ft.; a residential floor area of 148,109 sq. ft., as illustrated on the BSA-

approved plans;

THAT a minimum of 290 accessory parking spaces be provided at 58-04 Hoffman Drive as set forth in the Board's decision for BSA Cal. No. 25-89-BZ;

THAT the above condition be noted on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 420335729)

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## 25-89-BZ

APPLICANT – Kevin B. McGrath c/o Phillips Nizer LLP, for St. John's Garage LLC, owner.

SUBJECT – Application February 23, 2012 – Amendment of a variance (§72-21) which allowed for an accessory parking garage to be built for a hospital. The amendment seeks to permit the accessory parking to be used for community facility, commercial and residential uses. R6B zoning district.

PREMISES AFFECTED – 58-04 Hoffman Drive, 58<sup>th</sup> Avenue and Hoffman Drive, Block 2860, Lot 16, Borough of Queens.

## COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Kevin McGrath.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening, and an amendment to permit the conversion of a parking garage associated with the conversion of a hospital building to mixed-use commercial/community facility/residential use; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on September 25, 2012; and

WHEREAS, a companion application for the site at 89-52 Queens Boulevard occupied by the former hospital building and subject to a prior board variance under BSA Cal. No. 365-79-BZ was decided on the same date; and

WHEREAS, the premises and surrounding area had

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site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Queens, recommended approval of this application; and

WHEREAS, the subject site is located at the southeast corner of Hoffman Drive and 58<sup>th</sup> Avenue within an R6B zoning district; and

WHEREAS, the site is occupied by a five-story open parking garage built to be accessory to the hospital use across Hoffman Drive; and

WHEREAS, on February 11, 1992, under the subject calendar number, the Board approved a variance for a five-story parking garage which did not comply with lot coverage, front, side, and rear yards, location of access to street, exceeded the number of permitted parking spaces and included rooftop parking; and

WHEREAS, the applicant states that the hospital has gone out of business and there was not any interest from other hospitals or medical providers to occupy the hospital site at 89-52 Queens Boulevard and it has been vacant since early 2009; and

WHEREAS, the applicant now seeks to amend the 1992 variance to allow for the conversion of the continued use of the parking garage, but to convert it to be accessory to the converted mixed-used commercial/community facility/residential building; and

WHEREAS, DOB reviewed the proposal and noted that the proposed use does not comply with the prior Board approval and that the portion of the parking which will be accessory to the commercial use, will be non-conforming with the underlying R6B district use regulations; and

WHEREAS, the applicant states that it does not intend to enlarge or construct anything new on the site, but rather to maintain the 1992 garage building, which remains non-compliant as to the noted bulk conditions and establishes a non-conforming use for the portion accessory to commercial use; and

WHEREAS, the applicant states the neighboring uses include a church, several residential buildings, a vacant lot, and a park area with a fenced playground and athletic fields; and

WHEREAS, the applicant states that the area to the south of Hoffman Drive includes single-family homes, multiple dwellings, and medical offices and that the site across Hoffman Drive to the north is occupied by the former St. John's Hospital building, which is the subject of the companion application; an abandoned gas station; and a Sears Auto Center; further, the applicant states that the site is within a large commercial artery two blocks east of the entrance to the Long Island Expressway; and

WHEREAS, the applicant states that the resumed use of the building for parking is compatible with the retail corridor of Queens Boulevard and the residential streets to the south; and

WHEREAS, the applicant states that it commissioned a traffic study and a parking demand study to assess the effect of

the proposed change in use and found that there may be a slight traffic impact due to the change in use; and

WHEREAS, accordingly, the impact was addressed and resolved in the Recommended Transportation System Improvement Measures (RTSIM), which included signal phasing measures that could be easily implemented; and

WHEREAS, the applicant asserts that the traffic study findings were conservative since they were unable to compare the hospital's traffic conditions with the proposed traffic conditions since the hospital had already vacated the site at the time of the study; and

WHEREAS, in an August 31, 2012 letter, DOT identifies all of the proposed signal timing measures at Queens Boulevard and 57<sup>th</sup> Avenue and notes that the improvements appear reasonable and feasible; and

WHEREAS, the applicant proposes to provide 115 parking spaces for commercial use, 55 parking spaces for community facility use, and 120 parking spaces for residential use; and

WHEREAS, the applicant notes that the parking requirement for the residential use is 72 spaces (50 percent of the 144 dwelling units) and the maximum permitted for residential use is 150 spaces; and

WHEREAS, the applicant states that the 290 parking spaces will accommodate the parking demand at the site; and

WHEREAS, the applicant intends to allocate the parking spaces, by signage as follows: (1) community facility spaces on the lower levels; (2) the commercial use above the community facility use; and (3) the parking for the residential use on the upper levels; and

WHEREAS, the applicant states that it will provide an attendant to monitor the site for safety purposes; and

WHEREAS, the applicant states that its ten reservoir spaces are adequate to accommodate demand; and

WHEREAS, the applicant states that it will comply with all conditions of the prior grant, including (1) directing lighting for the rooftop parking downward and away from any adjacent residential uses; (2) maintaining the site free of graffiti; (3) monitoring the building by closed circuit television 24 hours a day; (4) including the building on security watch tours; (5) installing interior and exterior lighting to provide adequate illumination for security purposes; (6) posting "garage full" signs which are visible at all hours and from at least 300 feet away from the garage; (7) installing mirrors or lights at least ten feet away from the entrance/exit; and (8) planting and maintaining landscaping in accordance with the approved plans; and

WHEREAS, accordingly, the applicant represents that the proposed conversion will not alter the essential character of the surrounding neighborhood; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 11, 1992 so that as amended this portion of the resolution shall read: "to permit the conversion of the garage from accessory

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hospital (Use Group 4) use to accessory mixed commercial (Use Group 6)/community facility (Use Group 4)/residential (Use Group 2) use and to allow for the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked 'Received September 18, 2012'- (13) sheets and *on further condition*:

THAT the garage will contain a minimum of 290 parking spaces, as illustrated on the BSA-approved plans;

THAT the garage will be restricted to serving as accessory use to the building at 89-52 Queens Boulevard;

THAT that space will be provided for ten reservoir vehicles;

THAT all rooftop lighting will be directed downward and away from any adjacent residential uses;

THAT the site will be maintained free of debris and graffiti;

THAT the building will be monitored by closed circuit television 24 hours a day;

THAT the building will be included on security watch tours;

THAT interior and exterior lighting will be installed and maintained to provide adequate illumination for security purposes;

THAT "garage full" signs will be posted which will be visible at all hours and from at least 300 feet away from the garage;

THAT mirrors or lights will be installed at least ten feet away from the entrance/exit for additional visibility and safety;

THAT planting and landscaping be maintained in accordance with the approved plans;

THAT the above conditions and all other applicable conditions from prior approvals be noted on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the applicant will submit to DOT as least six months in advance of completion of the project all of the required drawings/designs relating to the improvements identified in DOT's August 31, 2012 letter;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(DOB Application No. 420335710)

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## 72-04-BZ

APPLICANT – Eric Palatnik, P.C., for Bway-129 St. Gasoline Corp., owner.

SUBJECT – Application December 5, 2011 – Extension of Term (§11-411) of a previously granted variance which permitted the construction and maintenance of an automotive service station (UG 16B) with accessory uses which expired on June 3, 2010; Waiver of the Rules. R6/C1-2 zoning district

PREMISES AFFECTED – 141-54 Northern Boulevard, southwest corner of Parsons Boulevard, Block 5012, Lot 45, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of a gasoline service station, which expired on June 3, 2010; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends approval of this application on the condition that no transient food trucks or other retail trucks be permitted to conduct business or sell food or retail products on the site; and

WHEREAS, the site is located on the southwest corner of Northern Boulevard and Parsons Boulevard, within a C1-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 1960 when, under BSA Cal. No. 436-59-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 20 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, 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; and

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WHEREAS, the applicant now requests an additional ten year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, during the hearing process, the Board directed the applicant to discontinue the rental car business that was being operated at the site and to restore the landscaping at the site; and

WHEREAS, in response, the applicant agreed to discontinue the rental car business and submitted photographs showing the removal of the cars and an affidavit from the owner of the site stating that the rental car franchise has been discontinued and will not be resumed at the site; and

WHEREAS, the applicant also submitted photographs and revised plans reflecting the restoration of the landscaping on the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated March 29, 2005, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 3, 2010, to expire on June 3, 2020; *on condition* that all use and operations shall substantially conform drawings filed with this application marked ‘Received August 28, 2012’-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on June 3, 2020;

THAT no transient food trucks or other retail trucks be permitted to conduct business or sell food or retail products on the site;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 4018275640)

Adopted by the Board of Standards and Appeals, September 25, 2012.

## 724-56-BZ

APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.

SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of an approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42nd Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Michael A. Cosentino and Tony Cosentino.  
For Opposition: Henry Euler and Christine Scherer.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 10 A.M., for continued hearing.

## 30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP for Maximum Properties, Inc., owner; Joseph Macchia, lessee.  
SUBJECT – Application July 10, 2012 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2004; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, north west corner of 185<sup>th</sup> Street. Block 7067, Lot 50, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

For Opposition: Henry Euler.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

## 39-65-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for adjourned hearing.

## 548-69-BZ

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107<sup>th</sup> Street, Block 1694, Lot 1, Borough of Queens.



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## COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for adjourned hearing.

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## 311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

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## 173-99-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.

SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.

PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43<sup>rd</sup> Avenue, Block 782, Lot 1, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 10 A.M., for continued hearing.

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## 302-01-BZ

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue,

west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

## COMMUNITY BOARD #3BX

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for adjourned hearing.

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## 134-06-BZ

APPLICANT – Akerman Senterfill, LLP, for 241-15 Northern LLC, owner.

SUBJECT – Application August 13, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) which permitted the construction of a five-story residential building containing 40 dwelling units and 63 accessory parking spaces which expires on September 9, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-15 Northern Boulevard, Northwest corner of the intersection between Northern Boulevard and Douglaston Parkway. Block 8092, Lot 39, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application which expired on May 12, 2007. R2A Zoning District.

PREMISES AFFECTED – 32-09 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

## COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

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WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of the enlargement of a single-family home under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in the *City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

WHEREAS, the site was inspected by Commissioner Montanez; and

WHEREAS, the site is located on the east side of 211<sup>th</sup> Street, between 32<sup>nd</sup> Avenue and 33<sup>rd</sup> Avenue, and has a total lot area of 4,500 sq. ft.; and

WHEREAS, the owner proposes to enlarge the existing single-family home at the site; and

WHEREAS, the subject site was formerly within an R2 zoning district; and

WHEREAS, the proposed enlargement complies with the former zoning district parameters; and

WHEREAS, however, on April 12, 2005 (hereinafter, the "Rezoning Date"), the City Council approved the rezoning proposal which rezoned the site to an R2A zoning district; and

WHEREAS, the building does not comply with the R2A district parameters; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on November 1, 2005, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant six months to complete construction, which expired on May 1, 2006; and

WHEREAS, subsequently, on May 16, 2006, the Board granted a one-year extension of time to complete construction and obtain a certificate of occupancy, which expired on May 16, 2007; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the building was not completed by the stipulated date due to financing delays; and

WHEREAS, however, the applicant submitted an affidavit from the owner stating that subsequent to the May 16, 2006 extension of time to complete construction, all exterior brick work, steps, air conditioning, plumbing, and light fixtures have been installed; and

WHEREAS, the affidavit from the owner states that the boiler has also been installed, and the only remaining work is

to have the gas meter installed and to obtain the necessary sign-offs from DOB; and

WHEREAS, the applicant represents that it will take approximately one year to complete the work at the site, obtain the necessary sign-offs from DOB, and obtain a certificate of occupancy; and

WHEREAS, the Board has reviewed the evidence and determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a one-year extension of time to complete construction; and

*Therefore it is Resolved* that this application to renew DOB Permit No. 401867618, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one year from the date of this resolution, to expire on September 25, 2013.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## 125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings' determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

## COMMUNITY BOARD #3M

### APPEARANCES –

For Applicant: Marvin B. Mitzner.

**ACTION OF THE BOARD** – Appeal granted.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a six-story mixed-use commercial/residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on December 6, 2011, after due notice by publication in *The City Record*, with continued hearings on January 24, 2012, February 28, 2012 and March 27, 2012, and then to decision on September 25, 2012; and

WHEREAS, the applicant filed a variance application, under BSA Cal. No. 96-11-BZ, seeking zoning waivers, which address the non-compliance with the current zoning; the Board agreed to adjourn the hearings on the variance application

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pending the outcome of the subject vested rights application; and

WHEREAS, the site is the subject of two prior Board decisions: (1) by decision dated November 25, 2008, under BSA Cal. No. 81-08-A (the “MDL Appeal”), the Board determined that DOB had erroneously approved waivers to the Multiple Dwelling Law (“MDL”) and (2) by decision dated August 3, 2010, under BSA Cal. No. 217-09-A (the “MDL Variance”), the Board approved a conditional grant to vary certain sections of the MDL to allow for the legalization of the enlargement of the building, subject to conditions to be reviewed by the Department of Buildings (“DOB”), as set forth in the Board’s decision; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application, citing the concern that the permits should not be reinstated to allow construction that does not comply with the current zoning; and

WHEREAS, State Assembly Speaker Sheldon Silver, State Senator Thomas Duane, and State Senator Daniel Squadron submitted written testimony in opposition to the application because the enlargement of the building does not comply with the MDL, the owner has not yet installed fire safety measures or eliminated the seventh floor construction, and on the basis that the Board’s earlier determination that the permit be revoked should not be reversed; and

WHEREAS, City Council Member Rosie Mendez submitted oral and written testimony in opposition to the application, citing concerns about the validity of the permit and that the building has not been modified in conformance with the Board’s prior decision and removed the seventh floor by February 3, 2011; and that the permit was properly revoked in November 2008 and the sixth and seventh floors violate MDL provisions; and

WHEREAS, the Greenwich Village Society for Historic Preservation submitted oral and written testimony in opposition to the application citing concerns that the construction violates the MDL and the current zoning and that the enlargement of the building is out of character with the neighborhood and that the permits should not be retroactively corrected; and

WHEREAS, certain community members raised concerns about approving a building that does not comply with current zoning and the issuance of the permit, and failure to complete work within the timeframe set forth in the MDL Variance decision; and

WHEREAS, the subject site is located on the south side of East 6<sup>th</sup> Street between Avenue A and Avenue B, within an R7B zoning district; and

WHEREAS, the site comprises two adjacent lots each occupied by a six-story attached building (together, the “Buildings”) with a total floor area pre-enlargement of 13,500 sq. ft. and a total lot area of 4,850 sq. ft.; and

WHEREAS, the applicant proposes to complete construction of an enlargement to the Buildings to result in a

total floor area of 16,200 sq. ft. (3.34 FAR); and

WHEREAS, the subject site is currently located within an R7B zoning district, but was formerly located within an R7-2 zoning district; and

WHEREAS, the applicant represents that the Buildings comply with the former R7-2 zoning district parameters, specifically with respect to FAR; and

WHEREAS, however, on November 19, 2008 (the “Rezoning Date”), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site to R7B; and

WHEREAS, the Buildings do not comply with the R7B zoning district parameters as to FAR; and

WHEREAS, the Board notes that, under the subject calendar number, the applicant initially sought to appeal DOB’s determination not to reinstate its permits along with asserting that it had met the vesting criteria; through the hearing process, the applicant modified its application to focus on the common law vesting criteria and did not pursue the appeal against DOB; and

WHEREAS, accordingly, the Board’s analysis addresses the common law vesting criteria and it does not take a position on DOB’s determination not to reinstate the permits; and

#### Procedural History

WHEREAS, on January 31, 2007, DOB issued an Alteration Type 2 (“Alt 2”) building permits (Job Nos. 104668646 and 104668655) for the renovation of the existing Buildings; the work performed under those permits included upgrading existing apartments, modernizing kitchens and bathrooms, and excavating the cellar for the installation of new steel columns to support the enlargement; the applicant also made MDL-related improvements including increasing the fire rating of common areas, improving the fire safety of stairways, installing fire-rated self-closing doors, and smoke detectors; and

WHEREAS, on May 21, 2007, DOB issued Alt 2 permit (Job No. 104694476) for the installation of sprinklers and on May 25, 2007, DOB issued an Alt 2 permit (Job No. 104762507) for the installation of new boilers, storage tanks, gas meters, and gas piping; and

WHEREAS, on June 28, 2007, DOB issued an Alt 1 permit (Job. No. 104816353) for the vertical enlargement of the Buildings; work on the enlargement commenced immediately including waterproofing, masonry, and roofing; and

WHEREAS, on July 24, 2007, DOB revoked the Alt 1, by which time the superstructure and walls were complete; and

WHEREAS, on October 4, 2007, DOB issued another Alt 1 (Job No. 104744877) based on an Alt 1 application filed on May 2, 2007, and work on the enlargement commenced, including plumbing, electrical, flooring, installation of fixtures, appliances, and tile and exterior work; and

WHEREAS, in early December 2007, at which time, per the applicant, work on the enlargement was 97 percent complete, DOB conducted a special audit and temporarily stopped work; and

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WHEREAS, the applicant represents that as of December 14, 2007, the last time construction was in progress, the project was approximately 97 percent finished; and

WHEREAS, on July 28, 2008, DOB granted a partial lift of the Stop Work Order so that the roof of the enlargement could be completed and the construction protected from the elements; and

WHEREAS, on November 19, 2008, the East Village/Lower East Side Rezoning took effect and the permit lapsed by operation of law; and

WHEREAS, in the MDL Appeal decision, dated November 25, 2008, the Board granted the appellant's request that the permit be revoked; and

WHEREAS, in the MDL Variance decision, dated August 3, 2010, the Board granted a conditional approval to vary certain conditions of the MDL; and

#### The Validity of the Permit

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Rezoning Date and that the work was performed pursuant to such permit; and

WHEREAS, in this case, there is no dispute that permits were issued and work was performed pursuant to those permits well in advance of the Rezoning Date; and

WHEREAS, however, a question raised by the Opposition is whether that permit can be deemed to have been lawful, in light of the fact that it was associated with DOB's erroneous approval of MDL variances (the subject of the MDL Appeal) and was ultimately revoked through its MDL Appeal decision; and

WHEREAS, subsequent to the Board's decision in the MDL Variance case, the applicant sought permits from DOB to complete the work authorized by the MDL Variance and reflected on the associated plans; and

WHEREAS, at that time, DOB took the position that it did not have the authority to reissue the permit under the R7-2 zoning in effect at the time of the permit's first issuance, and that, absent vesting, could only reissue the permit pursuant to R7B zoning; DOB determined that it could not reinstate the permits that the Board had directed to be revoked, through its resolution; and

WHEREAS, accordingly, because DOB will not reinstate the permit that the Board directed to be revoked in the MDL context, the Board considers whether its revocation determination has any effect on the permit in the vesting context; and

WHEREAS, the Board must consider the status of the permit which relied on DOB's erroneous approval and which it directed to be revoked, six days after the permit had already lapsed by operation of law; and

WHEREAS, the Board notes that in granting the MDL Appeal brought on behalf of a tenant of the Buildings, it agreed with the tenant that DOB erroneously modified the MDL in its approval of the building plans as it did not have authority to do so; in its resolution, the Board granted the appellant's request to (1) reverse DOB's final determination

and (2) revoke the permit.

WHEREAS, the Board notes that the MDL Appeal resolution addressed the authority to modify MDL regulations and did not address zoning compliance or the fact that on November 19, 2008, six days prior to its decision on the appeal, the East Village/Lower East Side Rezoning took effect, at which time the permit lapsed by operation of law; and

WHEREAS, subsequently, the Board granted the property owner's request to modify the MDL provisions that formed the basis for the MDL Appeal through the MDL Variance; and

WHEREAS, the Board also notes that New York state courts have recognized the permit validity question as one subject to the expertise of and have deferred to the buildings departments' and zoning boards' determinations about the validity of a permit; and

WHEREAS, the Board notes that it defers to DOB, as the permit issuing body, on the question of permit validity and that by its January 10, 2012 submission it states that the reinstatement of the Permit "would not present a correctable error issue" as long as the Board granted the vested rights application and its pending audit review concluded favorably for the applicant; and

WHEREAS, in support of its conclusion that the permit was validly issued prior to the Rezoning Date, the Board notes that (1) the MDL non-compliance had been resolved at DOB to a great extent prior to the rezoning in 2008, but the applicant had to re-apply to the Board, the appropriate authority, for additional modifications, which were not resolved until after the rezoning; (2) the flaws in the original permits relate to the erroneous assumption of jurisdiction of the permit-issuing entity first and secondarily to the substance of the non-compliance; (3) the Board's revocation was only intended to prevent the application from moving forward until the MDL issues were resolved and did not relate to zoning; (4) the MDL has not changed during the relevant time periods and the requirements were the same under the prior and current zoning regulations; and (5) the revocation was by the Board in the context of an interpretive appeal, rather than by DOB; and

WHEREAS, the Board states that the intent of its 2008 revocation was for the permit to be revoked to the extent of the MDL non-compliance and not to take any position on the remainder of the building subject to zoning and other regulations; and

WHEREAS, the Board recognizes that it directed the revocation of the permit and that it is within DOB's and the Board's authority to determine that the corrected permit is valid; and

WHEREAS, thus, because DOB's audit concludes to DOB's satisfaction that the plans comply with R7-2 zoning regulations, it is appropriate for the Board to accept the permit as valid while considering the vesting criteria; and

WHEREAS, by letter dated September 24, 2012, DOB states that all zoning objections have been resolved; and

WHEREAS, the applicant cites to GRA V, LLC v. Srinivasan, 12 N.Y.3d 863 (2009), for the proposition that

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minor plan errors may be corrected in the vested rights context in accordance with the prior zoning; and

WHEREAS, the applicant states that DOB's erroneous issuance of the initial permit, which included waiver of MDL non-compliance, was authorized by the highest levels of DOB and the MDL non-compliance has already been corrected and resolved by the Board's MDL Variance; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date and based on the fact that it directed the Permit to be revoked solely due to MDL non-compliance, it makes the determination that the Permit (with its zoning objections resolved) was valid; and

WHEREAS, however, pursuant to ZR § 11-332, for other construction, the applicant must apply to renew the lapsed permit within 30 days of the Rezoning Date; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of their lapse on November 19, 2008, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

## The Vesting Analysis

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed the following: approximately 97 percent of the enlargement, as described above, nearly a year before the Rezoning Date; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, an engineer's statement, and communication with DOB; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the

documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed prior to the Rezoning Date; and

WHEREAS, the Board concludes that based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Rezoning Date (and prior to the December 14, 2007 Stop Work Order), the owner expended \$1,517,062, including hard and soft costs and irrevocable commitments, out of \$1,557,062 budgeted for the Enlargement; the applicant separated out the additional costs associated with the entire project including work in the existing Buildings not affected by the rezoning; and

WHEREAS, as proof of the expenditures, the applicant has submitted copies of cancelled checks and accounting tables; and

WHEREAS, thus, the expenditures up to the December 14, 2007 Stop Work Order represent approximately 97 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, the Board notes that it did not consider or credit the work or costs associated with the seventh-floor portion of the enlargement as it is to be removed pursuant to the Board's approval in the MDL Variance; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, the site's floor area would have to be reduced from the proposed 16,200 sq. ft. (3.34 FAR) to a maximum of 14,550 sq. ft. (3.0 FAR); and

WHEREAS, the applicant represents that if vesting were not permitted, it would have to remove nearly the entire sixth floor enlargement (the application does not seek to vest the seventh-floor enlargement and has not considered it in its loss analysis); and

WHEREAS, the applicant represents that compliance with the R7B zoning district parameters would result in a

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reduction of the annual rental income of approximately \$165,500; and

WHEREAS, additionally, the applicant states that the deconstruction of the enlargement would require the fifth floor to be vacated for the six months of reconstruction, resulting in additional lost rental income of \$90,000; and

WHEREAS, the applicant states that it would lose the entire \$1,517,062 cost of the enlargement and the \$320,000 cost to remove the enlargement and reconstruct the roof; and

WHEREAS, the applicant states that the floor area that would be lost represents 20 percent of the floor area of the pre-existing Buildings and that since the units in the enlargement are new and on the highest floor, they have a disproportionately higher value compared to the other units; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Buildings had accrued to the owner of the premises at the Rezoning Date; and

WHEREAS, as to the Opposition's concerns that the Buildings do not comply with MDL requirements, the Board notes that it has thoroughly reviewed and approved the MDL-related provisions as reflected in the resolution and on the plans associated with the MDL Variance and that none of the requirements set forth in that decision or the associated plans have been disturbed or will be altered without the Board's review and approval; further, the Board notes that the Appellate Division has upheld its decision in the MDL Variance case See Chin v. Board of Standards and Appeals, 97 A.D.3d 485 (1<sup>st</sup> Dept. 2012); and

WHEREAS, as to the Opposition's concerns that the applicant has not yet instituted the changes associated with the MDL Variance, including the installation of fire safety measures and the removal of the partial seventh floor, the Board accepts the applicant's assertion that those changes would be affected by the determination in the subject vested rights application and, thus it sought a determination on vesting prior to commencing the work; and

WHEREAS, as to the Opposition's assertion that the Board's determination in the MDL Appeal case that the permit be revoked not be reversed, as discussed above, the revocation of the permit was associated with MDL non-compliance and was not a reflection of the Board's position on the validity of the permit; and

WHEREAS, as to the Opposition's argument that the proposed Buildings are out of context with the surrounding neighborhood, the applicant states, and the Board agrees, that findings related to neighborhood character are not part of the

vested rights analysis; and

WHEREAS, the Board notes that findings related to the financial feasibility of the project are also not part of the vested rights analysis; and

WHEREAS, while the Board is not persuaded by any of the Opposition's arguments, it nevertheless understands that the community and the elected officials worked diligently on the East Village/Lower East Side Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, however, the Board finds that the applicant has met the test for a common law vested rights determination, and therefore has the right to continue construction on the site pursuant to the zoning regulations in place prior to the Rezoning Date.

*Therefore it is Resolved* that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 104744877, as well as all related permits for various work types, either already issued or necessary to complete construction as approved by DOB and in compliance with the MDL Variance and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## **83-12-A & 84-12-A**

APPLICANT – Richard G. Leland, Esq./Fried Frank, for Frank Ferrovicchio, owner; Millennium Billboards LLC, lessee..

SUBJECT – Application April 6, 2012 – Appeal from Department of Buildings' determination that a sign is not entitled to continued, non-conforming use status as an advertising sign. C8-3 zoning district.

PREMISES AFFECTED – 653 Bruckner Boulevard, intersection of Bruckner Boulevard and Timpson Place, Block 2603, Lot 115, Borough of Bronx.

## **COMMUNITY BOARD #2BX**

APPEARANCES –

For Applicant: Richard Leland.

**ACTION OF THE BOARD** – Application Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to Notice of Sign Registration Rejection letters from the Bronx Borough Commissioner of the Department of Buildings ("DOB"), dated March 7, 2012, denying Application Nos. 2004601 and 2004702 for sign registration at the subject site (the "Final Determinations"); and

WHEREAS, the Final Determinations state, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to

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the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS, a public hearing was held on this appeal on August 7, 2012 after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, the subject site is located on an irregularly-shaped lot bounded by Bruckner Boulevard to the south and Timpson Place to the north, within a C8-3 zoning district; and

WHEREAS, the site is occupied by a two-story building with a rooftop sign structure with two 14'-0" by 48'-0" signs; one facing north and one facing south (the "Signs"); and

WHEREAS, the Signs are located within 200 feet of the Bruckner Expressway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the lessee of the Signs (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the Appellant's registration of the Signs based on DOB's determinations that the Appellant (1) failed to provide evidence of the establishment of the advertising signs and (2) failed to establish that such use has, if lawfully established, continued without an interruption of two years or more; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## PROCEDURAL HISTORY

WHEREAS, the Appellant asserts that the Signs have been in continuous operation as advertising signs since as early as 1945; and

WHEREAS, the Appellant states that it began leasing the sign structure in 2004, and following the commencement of its lease, the Appellant applied to DOB for maintenance permits to place new advertising signage copy on each of the Signs; and

WHEREAS, the Appellant further states that on March 16, 2004, DOB issued permits 200844042-01-SG, 200844033-01-SG, 200843962-01-EW, and 200843971-01-EW (the "2004 Permits"), for the maintenance and replacement of "advertising sign copy" for each of the Signs and for maintenance of the "existing sign structure," noting that there was no change in use; and

WHEREAS, on or about September 1, 2009, pursuant to the 2008 Building Code and Chapter 49 of Title 1 of the Rules of the City of New York ("RCNY"), the Appellant filed sign registration applications with DOB to register the Signs as non-conforming advertising signs (the "Sign

Registration Applications"); and

WHEREAS, by letter dated October 3, 2011, DOB informed the Appellant that its filing failed to provide proof of legal establishment of the Signs prior to the 2004 Permits; and

WHEREAS, by letter dated January 6, 2012, the Appellant argued to DOB that the issuance of the 2004 Permits alone, without any further information, is sufficient "proof of legal establishment;" and

WHEREAS, by letter dated January 30, 2012, the Appellant supplemented its Sign Registration Applications with an affidavit attesting to the uninterrupted and continuing presence and use of the Signs from 1963 until 1989; and

WHEREAS, DOB determined that the additional material was inadequate proof of the legal establishment of the Signs, and issued the Final Determinations on March 7, 2012; and

## RELEVANT ZONING RESOLUTION PROVISIONS

### *ZR § 12-10 Definitions*

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

\* \* \*

### *ZR § 32-662 Additional Regulations for Advertising Signs*

In all districts, as indicated, no advertising sign shall be located, nor shall an existing advertising sign be structurally altered, relocated or reconstructed within 200 feet of an arterial highway...However, in all districts as indicated, the more restrictive of the following shall apply:

- (1) Any advertising sign erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highways, shall have legal non-conforming use status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size on May 31, 1968.
- (2) Any advertising sign erected, structurally altered, relocated, or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in surface area on its face, 30 feet in height and 60 feet in length, shall have legal non-conforming use status pursuant to Section 52-83, to the extent of its size existing on

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November 1, 1979.

\* \* \*

ZR § 52-11 *Continuation of Non-Conforming Uses*  
General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

\* \* \*

ZR § 52-61 *Discontinuance*  
General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

\* \* \*

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(15) With respect to each sign that has been identified in the sign inventory as a non-conforming sign, the following additional information shall be included with the registration application:

- a. The Zoning Resolution section that establishes the sign as a non-conforming sign.
- b. Evidence that the non-conforming sign existed and the size of the sign that existed as of the relevant date set forth in the Zoning Resolution to establish its lawful status. Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date. Affidavits, Department cashier's receipts and permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign. The submitted evidence must specifically establish the non-conforming aspect of the sign. For example, where evidence is submitted to establish that a sign is a non-conforming advertising sign, proof that the sign was erected, but that does not establish that it was advertising, will not be sufficient; and

THE APPELLANT'S POSITION

A. Lawful Establishment and Continuous Use

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs were

lawfully established as advertising signs prior to November 1, 1979 and may therefore be maintained as legal non-conforming advertising signs pursuant to ZR § 52-11, and (2) the Signs have operated as advertising signs with no discontinuance of two years or more since their lawful establishment; and

WHEREAS, in support of its assertion that the Signs were lawfully established prior to November 1, 1979 and have been in continuous use to the present, the Appellant relies on: (1) a 1945 action relating to an Electric Sign (ES 39-45) listed in DOB's Building Information System ("BIS"); (2) two 1960 actions relating to Electric Signs (ES 95-60 and ES 96-60) listed in BIS; (3) an affidavit dated January 21, 2012 from Donald Robinson, an employee of various outdoor advertising companies from 1963 through 1989, which states that the Signs were existing in 1963 and that they were being used from 1963 to 1989 as advertising signs (the "Robinson Affidavit"); and (4) aerial photographs dated March 30, 1978 showing a sign structure (with indiscernible sign copy) at the site (the "1978 Photographs"); and

WHEREAS, in support of the existence of the Signs as advertising signs from 1979 through 1985, the Appellant relies on: (1) aerial photographs dated January 3, 1980, which the Appellant claims show advertising copy for a retail establishment on the Signs (the "1980 Photographs"); (2) a 1984 action relating to an Electric Sign (ES 20-84) listed in BIS; (3) a 1985 action relating to an Electric Sign (ES 84-85) listed in BIS; and (4) the Robinson Affidavit; and

WHEREAS, in support of the existence of the Signs from 1986 through 1989, the Appellant relies on: (1) a letter dated December 18, 2000 from Frank Ferrovicchio, the then owner of the site, referencing a lease agreement for advertising signs at the site from February 18, 1986 which was amended and extended on February 29, 1996, to expire on February 28, 2001 (the "December 18, 2000 Letter"); (2) a letter dated October 6, 2000 from Vista Media Group stating that it has assumed the lessee rights and obligations under a lease with TDI/Outdoor Systems/Infinity (the "October 6, 2000 Letter"); and (3) the Robinson Affidavit; and

WHEREAS, in support of the existence of the Signs from 1990 through 1992, the Appellant relies on: (1) an aerial photograph dated February 2, 1990, which the Appellant claims shows advertising copy on the Signs (the "1990 Photograph"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs from 1993 through 1999, the Appellant relies on: (1) an aerial photograph dated March 26, 1993 (the "1993 Photograph"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in

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<sup>1</sup> DOB acknowledges that the surface area of the Signs do not exceed 1,200 sq. ft. on their face, 30 feet in height, or 60 feet in length, and therefore the Signs may have legal non-conforming status if erected prior to November 1, 1979 pursuant to ZR § 32-662.



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2000, the Appellant relies on: (1) the December 18, 2000 Letter; and (2) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2001, the Appellant relies on: (1) a letter dated July 11, 2001 from City Outdoor Inc., an outdoor advertising company, referencing a contract with an advertiser from September 2001 to December 2001 (the "July 11, 2001 Letter"); (2) the December 18, 2000 Letter; and (3) the October 6, 2000 Letter; and

WHEREAS, in support of the existence of the Signs in 2002, the Appellant relies on aerial photographs dated February 12, 2002 showing advertising copy for a car on the Signs (the "2002 Photographs"); and

WHEREAS, in support of the existence of the Signs in 2004, the Appellant relies on the 2004 Permits; and

WHEREAS, in support of the existence of the Signs in 2009, the Appellant relies on photographs taken in 2009 and submitted by the Appellant to DOB with its Sign Registration Applications; and

WHEREAS, the Appellant argues that the 1978 Photographs clearly show a sign structure on the site, and although the exact copy on the Signs is not discernible from the photographs, that evidence combined with the 1980 Photographs (taken less than three months after November 1, 1979) which clearly depict advertising copy on the Signs, supports the inference that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, the Appellant contends that it has submitted sufficient evidence for the Board to conclude that the Signs were established prior to November 1, 1979 and have been maintained as legal non-conforming uses since that date; and

## B. Ability to Rely on 2004 Permits Alone

WHEREAS, the Appellant asserts that the Signs qualify as non-conforming advertising signs under ZR § 32-662 because the 2004 Permits issued by DOB establish that DOB has already accepted the legal non-conforming status of the Signs; and

WHEREAS, the Appellant further contends that the 2004 Permits specifically provide for the maintenance and replacement of "advertising sign copy" for the Signs and DOB has never alleged that the permits were issued for anything other than advertising signs; therefore, the fact that DOB issued the 2004 Permits establishes that DOB has sufficient evidence that advertising signs have continuously been maintained on the site prior to November 1, 1979; and

WHEREAS, as to the 1980s Department of Finance ("DOF") tax photograph submitted by DOB (the "1980s DOF Photograph"), which DOB claims is evidence of an accessory sign at the site at that time, the Appellant argues that DOB provides no substantiation as to whether this sign was an accessory sign or advertising sign, and in the event that the sign depicted in the photograph were determined to have been an accessory sign, DOB has not provided any proof that the advertising use of the Signs was discontinued for two years or more, and one single photo from a single moment in time is not in and of itself sufficient to establish

discontinuance for a period of two years or more; and

WHEREAS, the Appellant argues that it made substantial investments in the Signs, including investments in repairs and maintenance along with the marketing costs involved in placing advertisements on the site, in reasonable reliance on DOB's issuance of the 2004 Permits; and

WHEREAS, the Appellant contends that it has continued to invest in the Signs in reliance on DOB's issuance of the 2004 Permits for eight years, and as the applicable laws have not changed since 2004, under established principles of equity DOB cannot now be allowed to change its position arbitrarily on the legality of the Signs to the detriment of the Appellant's business; and

## DOB'S POSITION

### A. Lawful Establishment

WHEREAS, DOB contends that the Appellant has failed to provide adequate evidence that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, DOB states that in order to show proof of establishment of the advertising signs under the non-conforming use provisions of ZR § 32-662, the Appellant would need to demonstrate that the advertising signs were installed prior to November 1, 1979; and

WHEREAS, DOB further states that if the Appellant produced a permit for the advertising signs prior to November 1, 1979, DOB would accept the advertising signs as lawfully established; further, if the Appellant is unable to produce an advertising sign permit, DOB states that it would also look at additional evidence indicated in RCNY 49(d)(15)(b), including photographs, affidavits, leases, and receipts which indicate that advertising signs were installed prior to November 1, 1979; and

WHEREAS, DOB argues that the only evidence the Appellant has produced to show lawful establishment of the Signs are the BIS printouts indicating applications for electric sign permits in 1945, 1960, 1984, and 1985, the aerial photographs from 1978 and 1980, the 2004 Permits, and the Robinson Affidavit, and none of these records establish that an advertising sign was installed prior to November 1, 1979; and

WHEREAS, as to the electric sign permits indicated on BIS from 1945, 1960, 1984, and 1985, DOB states that it performed a search of its records and, based on the documentation discovered with respect to the applications, finds that they do not establish the advertising signs prior to November 1, 1979; and

WHEREAS, specifically, DOB states that for ES 39-45, DOB's records only contain a "Block and Lot" docket entry dated April 13, 1945 indicating an electric sign 5'-0" by 8'-0" at the site, which does not support a contention that the Signs were established as advertising signs under this application; and

WHEREAS, DOB states that for ES 95-60 and ES 96-60, DOB's records only contain a "Block and Lot" docket entry dated April 7, 1960 which provides a limited description of two electric signs at the site and the

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description states “International Harvester Company, T. George Paladino Holding Corp., O.”; and

WHEREAS, DOB contends that, based on a review of other sign entries in the “Block and Lot” dockets, the description for most advertising signs will specifically indicate that the sign is an advertising sign; since the description for the 1960 BIS records does not indicate that the signs are advertising signs, DOB states that it cannot conclude that advertising signs were established under these electric sign applications without further information; and

WHEREAS, DOB states that for BN 145-84, the application indicates that the proposed work was for “Refurbishing roof structure *for business signs* 10’-4” x 48’-0” = 496 Sq. Ft.” (emphasis added), and since this application was filed to refurbish business signs (now defined as accessory signs under the Zoning Resolution), not advertising signs, this application not only fails to establish the Signs as advertising signs prior to November 1, 1979, but it also provides evidence that the advertising signs were not in existence at the site at that time; and

WHEREAS, DOB also submitted the 1980s DOF Photograph, and DOB contends that the 1985 BIS documentation to refurbish business signs is consistent with the 1980s DOF Photograph which clearly indicates that one of the Signs is being used as an accessory business sign, not as an advertising sign; specifically, the 1980s DOF Photograph clearly shows that the sign copy states “Center Sheet Metal,” and a review of documents recorded for the site with DOF in ACRIS clearly indicates the existence of a “Center Sheet Metal, Inc.” at the subject site from at least 1988 to 1993; and

WHEREAS, DOB states that for BN 741-85, the application indicates that the proposed work was for “a roof sign support structure,” and since the application was filed in 1985, six years after the relevant date in ZR § 32-662 to establish a non-conforming advertising sign, this application does not support a contention that advertising signs were established prior to November 1, 1979, especially since BN 145-84 was filed a year before indicating business signs at the site; and

WHEREAS, DOB argues that while BN 741-85 does indicate that an application exists for proposed work on an advertising sign at the site, the Appellant has not produced any evidence which indicates the establishment of advertising signs at the site prior to November 1, 1979; and

WHEREAS, DOB disagrees with the Appellant’s contention that the 1978 Photographs combined with the 1980 Photographs establish the use of the advertising signs at the site prior to November 1, 1979, and asserts that the 1978 Photographs and one of the two 1980 Photographs are unclear and the other 1980 Photograph shows a sign with a copy that states, in part, “the Tire Shop,” which may be an accessory sign and not an advertising sign; and

WHEREAS, DOB argues that the Appellant has not provided evidence which proves that the 1980 Photographs demonstrate an advertising copy on the Signs, and while there is no evidence that advertising signs existed in 1979,

as noted above, there is substantial evidence which indicates that at least one accessory sign was located at the site in the 1980’s as evidenced by the BN 145-84 job application to refurbish a roof structure for “business signs” and the 1980s DOF Photograph with ACRIS documents supporting the fact that the sign was accessory; and

WHEREAS, as to the Appellant’s claim that issuance of the 2004 Permits is sufficient for the lawful establishment of the Signs, DOB states that the 2004 Permits were based on professionally certified plans and job applications, and were issued in error and would have been the subject of objections and a 15-day Letter of Intent to Revoke had it not been for the commencement of the subject appeal; and

WHEREAS, DOB argues that, as the 2004 Permits were issued based on professionally certified job applications and plans, DOB did not review the plans to determine whether the Signs complied with the non-conforming use requirements in a C8-3 zoning district pursuant to ZR § 32-662 at the time of filing; however, once DOB reviewed the legality of the Signs under ZR § 32-662 as part of its review of the Sign Registration Applications, DOB determined that the Signs did not comply with the non-conforming use requirements; and

WHEREAS, DOB further argues that the 2004 Permits were issued to “maintain” the existing roof structures and Signs and to replace the advertising copy based on the Appellant’s professional certification that the Signs were lawfully used as advertising signs; however, the applications did not include evidence to establish the legality of the Signs or the erection of advertising signs prior to November 1, 1979, and therefore the 2004 Permits do not establish the Signs as non-conforming advertising signs; and

B. The Evidence of Continuity Fails to Satisfy the Standard Set Forth in DOB Technical Policy and Procedure Notice 14/1988 (“TPPN 14/1988”)

WHEREAS, DOB asserts that even if the Appellant has established the Signs as non-conforming advertising signs, the Appellant must also submit sufficient evidence to establish that the Signs have been continuously used as advertising signs since November 1, 1979, without any two-year period of discontinuance, as required by ZR § 52-61; and

WHEREAS, DOB contends that the Appellant’s evidence of continuity of the Signs fails to satisfy TPPN 14/1988, which sets forth guidelines for DOB’s review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that the Appellant has not provided any relevant records from any City agency (Item (a) evidence), except for the 2004 Permits, which were improperly issued as described above, and the BIS and DOB records from 1945, 1960, 1984, and 1985; DOB asserts that, at most, BN 741-85 indicates that applications were filed with

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DOB for proposed work on advertising signs in 1985; and

WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) and no other bills indicating the use of the building (Item (c) evidence) were submitted by the Appellant; and

WHEREAS, as to the Robinson Affidavit (Item (d) evidence), which the Appellant alleges is evidence of the continuous use of the Signs as advertising signs from 1963 until 1989, DOB argues that the affidavit is not credible based on the 1980s DOF Photograph and ACRIS records which clearly indicates that at least one of the Signs was being used as an accessory sign for a time in the 1980s, not an advertising sign of “off premise advertisements;” and

WHEREAS, DOB asserts that because the Robinson Affidavit is uncorroborated testimonial evidence that the Signs have existed continuously from 1963 until 1989, this evidence is not considered sufficient because the testimony may be tainted by memory lapses, bias, and misperception, and because it is clear from the 1980s DOF Photograph that the affidavit cannot be deemed credible; and

WHEREAS, as to the photographs, DOB states that, even if it accepted the lawful establishment of the Signs, there is a gap of photographic evidence from January 3, 1980 (which as described above, may be a photograph of an accessory sign) until March 26, 1993 (which is a photograph of a sign with an unusual size, proportion, and angle compared to the Signs currently located on the site, and it is not clear that the sign in the photograph is located on the subject site); and

WHEREAS, DOB asserts that, due to the gap in photographic evidence, the job application from 1984 (BN 145-84) which states that business signs were located on the site, the 1980s DOF Photograph and ACRIS records which indicate that there were accessory signs on the site for a time starting in the 1980s, and the fact that it does not find the Robinson Affidavit to be credible, DOB concludes that the totality of the evidence presented by the Appellant does not establish that advertising signs have continued on the site without an interruption of two years or more since November 1, 1979; and

## CONCLUSION

WHEREAS, the Board agrees with DOB’s determination that the Appellant has not provided sufficient evidence of the lawful establishment of the Signs as advertising signs prior to November 1, 1979, or of their continuous use as advertising signs without any two-year interruption since 1979; and

WHEREAS, the Board finds the Appellant’s evidence of lawful establishment of the Signs as advertising signs to be insufficient primarily because: (1) the 1945 and 1960 BIS documentation does not provide sufficient information to support the establishment of advertising signs; (2) the 1978 Photographs are not decipherable as to whether the Signs depicted advertising or accessory copy; (3) the 1980 Photographs are beyond the applicable date for establishing the advertising signs, the north-facing sign is not decipherable, and the south-facing sign which reads “The Tire Shop” is not sufficient to establish that the sign is an advertising sign rather

than an accessory sign; and (4) the Robinson Affidavit is not substantiated and is contradicted by the evidence submitted by DOB (the 1984 BIS documentation, the 1980s DOF Photograph, and the corresponding ACRIS records) that the signs were used as accessory signs for a time in the 1980s; and

WHEREAS, the Board agrees with DOB that, even if the Appellant had provided sufficient evidence of the lawful establishment of the Signs, the evidence submitted regarding the continuous use of the Signs as advertising signs without any two-year discontinuance is also insufficient; and

WHEREAS, as noted above, the Board finds that the 1978 Photographs and the 1980 Photographs are not clear enough to establish that the Signs were being used as advertising signs, the Robinson Affidavit cannot be relied upon as evidence of the continued use of the Signs as advertising signs given the contradiction between the affidavit and the evidence submitted by DOB that the Signs were used as accessory business signs for a time in the 1980s, and the 1984 BIS documentation indicates use of the Signs as business signs rather than advertising signs; accordingly, even if the Board found that there was lawful establishment of the Signs as advertising signs, the Appellant has failed to provide any evidence of the continuous use of the Signs as advertising signs from November 1, 1979, until at least 1985, when BN 741-85 was filed for proposed work on an “advertising sign;” and

WHEREAS, as to the remaining evidence submitted by the Appellant in support of the continuous use of the Signs as advertising signs, the Board finds (1) the 1990 Photograph is not clear enough to establish whether the Signs were being used to display advertising or accessory copy; (2) the December 18, 2000 Letter, which references a lease agreement for advertising signs on the site from February 18, 1986 through February 28, 2001, does not constitute sufficient evidence in and of itself, and particularly without a copy of the lease in question, to establish that the Signs were being used as advertising signs throughout this period; and (3) the October 6, 2000 Letter and the July 11, 2001 Letter are not substantiated and are insufficient to establish the use of the Signs without additional supporting information, given that the letters make no reference to the address or location of the subject site, or to the signs in question at the site; and

WHEREAS, the Board finds that only the 1993 Photograph, the 2002 Photographs, and the 2009 Photographs submitted with the Sign Registration Applications are clearly decipherable as advertising signs; and

WHEREAS, the Board agrees with DOB that the issuance of the 2004 Permits is not sufficient for the lawful establishment of the Signs, as the 2004 Permits were based on professionally certified plans and job applications, and once DOB reviewed the legality of the Signs under ZR § 32-662 as part of its review of the Sign Registration Applications, DOB determined that the Signs did not comply with the non-conforming use requirements and therefore the 2004 Permits were issued in error; and

WHEREAS, the Board notes the principle that government agencies, like DOB, maintain the ability to

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correct mistakes, such as the issuance of building permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and agrees that DOB is not estopped from correcting an erroneous approval of a building permit (see Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988)); and

WHEREAS, based upon the above, the Board finds that there are significant gaps in time regarding the evidence submitted by the Appellant in support of the continuous use of the Signs as advertising signs, which the Board cannot ignore, and the limited evidence to which the Board does give some weight (the 1985 BIS documentation, the 1993 Photograph, the 2002 Photographs, and the 2009 Photographs), does not support the continuous use of the Signs as advertising signs since November 1, 1979, but merely indicates moments in time at which the Signs may have been used as advertising signs, without any evidence supporting the Appellant's claim that there was no two-year discontinuance of the use; and

WHEREAS, as to the Appellant's claim that the Board should find that the Signs are legal based on the principles of equity, the Board notes that questions of equity are not within its purview, as the Board is an administrative body and is not empowered to provide an equitable remedy (see People ex rel. New York Tele. Co. v. Public Serv. Comm., 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also Faymor Dev. Co. v Bd. of Sds. and Apps., 45 N.Y.2d 560, 565-567 (1978)); and

WHEREAS, in sum, the Board concludes as follows: the Appellant has not established that the Signs were lawfully established as advertising signs prior to November 1, 1979 or that the Signs have been in continuous use as advertising signs since November 1, 1979 without any two-year period of discontinuance; thus, the Signs do not meet the criteria required for continuing such use within the subject zoning district and must cease; and

*Therefore it is Resolved* that this appeal, which challenges the Final Determinations issued on March 7, 2012 is denied.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## 164-12-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Robert Hauck, lessee.

SUBJECT – Application June 11, 2012 – Proposed construction not fronting on a mapped street and within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 210 Oceanside Avenue, Block 16350, part of Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 29, 2012, acting on Department of Buildings Application No. 420521992, reads in pertinent part:

- A1- The proposed building is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art. 3 Sect. 35 of the General City Law
- A2- The site and building is not fronting on an official mapped street therefore; No permit or Certificate of Occupancy can be issued as per Article 3, Section 36 of the General City Law; and also no permit can be issued since proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012 and September 25, 2012, and then to decision on the same date; and

WHEREAS, by letter dated August 20, 2012 the Fire Department states that it has no objection to the subject proposal, and due to the fact that the proposed enlargement is less than 125 percent of the existing floor area, no Fire Code regulations are triggered; and

WHEREAS, by letter dated June 25, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 5, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT further states that the subject lot is not currently included in the agency's Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated May 29, 2012, acting on Department of Buildings Application No. 420521992, is modified by the power vested in the Board by Section 35 and Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 14, 2012"-one

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(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## **45-03-A thru 62-03-A & 64-03-A**

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56' west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

APPEARANCES –

For Applicant: Joe Loccisano.

For Administration: Simon Ressler, Fire Department.

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

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## **89-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Simon Ressler, Fire Department.

**ACTION OF THE BOARD** – Laid over to October

30, 2012, at 10 A.M., for continued hearing.

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## **92-07-A thru 94-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Simon Ressler, Fire Department.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

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## **95-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Simon Ressler, Fire Department.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for continued hearing.

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## **46-12-A**

APPLICANT – Eric Palatnik, P.C., for Tremont Three, LLC, owner.

SUBJECT – Application March 1, 2012 – Application to permit a mixed use development located partially within the bed of a mapped but unbuilt street (East Tremont Avenue), contrary to General City Law Section 35. C4-5X/R7X zoning district.

PREMISES AFFECTED – 4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues, Block 3027, Lot 1, Borough of Bronx.

### **COMMUNITY BOARD #6BX**

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 16, 2012, at 10 A.M., for decision, hearing closed.

## 144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f).

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Marvin Mitzer.

For Opposition: Jack Lester, Richard N. Gottfried, Simson Bansft, Fern Luskin, Andito Lloyd, Barbara Tesx, Chrisiabel Gough, Julie M. Finch, Paul Spencer, Cathy Cleman, David Holowka, Edward S. Kirkland, Joanne Gaboriault and Henry Euler.

For Administration: Mark Davis, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

## 145-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Marvin Mitzer.

For Opposition: Jack Lester, Richard N. Gottfried, Simson Bansft, Fern Luskin, Andito Lloyd, Barbara Tesx, Chrisiabel Gough, Julie M. Finch, Paul Spencer, Cathy Cleman, David Holowka, Edward S. Kirkland, Joanne Gaboriault and Henry Euler.

For Administration: Mark Davis, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING

**TUESDAY AFTERNOON, SEPTEMBER 25, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

## ZONING CALENDAR

### 178-11-BZ

#### CEQR #12-BSA-042K

APPLICANT – Eric Palatnik, P.C., for Elie Zeitoune, owner.

SUBJECT – Application November 29, 2011 – Special Permit (§73-622) for the enlargement of an existing two story, semi-detached single family home, contrary to floor area and open space (§23-141(b)); side yard (§23-461) and rear yard (§23-47) requirements. R5 zoning district.

PREMISES AFFECTED – 1944 East 12<sup>th</sup> Street, between Avenue S and T, Block 7290, Lot 24, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, May 24, 2012, acting on Department of Buildings Application No. 320369695, reads in pertinent part:

- 1- Proposed plans are contrary to ZR 23-141(b) proposed Floor Area Ratio (FAR) exceeds the maximum FAR of 1.25
- 2- Proposed plans are contrary to ZR 23-141(b) minimum open space (45%) and maximum lot coverage (55%)
- 3- Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the required 30'-0"
- 4- Proposed plans are contrary to ZR 23-461(b) proposed side yard that is being horizontally extended is less than 8'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R5 zoning district, the proposed enlargement of a single-family semi-detached home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this

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application on July 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 12th Street, between Avenue S and Avenue T, within an R5 zoning district; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with a floor area of 1,397 sq. ft. (0.69 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,397 sq. ft. (0.69 FAR) to 3,054 sq. ft. (1.52 FAR); the maximum permitted floor area is 2,500 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to provide an open space of 44.15 percent (45 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 55.85 percent (55 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide a side yard with a width of 3'-10" (a side yard with a minimum width of 8'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, specifically, the applicant submitted land use maps and photographs which reflect the history of enlargement to similar semi-detached homes in the area; and

WHEREAS, the applicant also provided an analysis which included seven homes (six of which are within the 400-ft. radius of the subject home), with comparable FARs; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R5 zoning district, the proposed enlargement of a single-family semi-detached home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 7, 2012"-(11) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,054 sq. ft. (1.52 FAR); a minimum open space of 44 percent; a maximum lot coverage of 55.85 percent; a side yard with a minimum width of 3'-10" along the northern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## **10-12-BZ CEQR #12-BSA-066Q**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Natalie Hardeen, owner.

SUBJECT – Application January 18, 2012 – Variance (§72-21) to permit the legalization of an existing cellar and two story, two-family detached dwelling, contrary to front yard (§23-45) and side yard (§23-461) regulations. R5 zoning district.

PREMISES AFFECTED – 114-01 95<sup>th</sup> Avenue, northeast corner of 95<sup>th</sup> Avenue and 114<sup>th</sup> Street, Block 9400, Lot 37, Borough of Queens.

## **COMMUNITY BOARD #9Q**

APPEARANCES –

For Applicant: Todd Dale.

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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 23, 2011, acting on Department of Buildings Application No. 402225258, reads in pertinent part:

Proposed two family dwelling without a required front yard and without a required side yard is contrary to Sections 23-45 and 23-461 and must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the legalization of a two-story two-family home that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application on July 24, 2012 after due notice by publication in *The City Record*, with continued hearings on August 14, 2012 and September 11, 2012, and then to decision on September 25, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of 95<sup>th</sup> Avenue and 114<sup>th</sup> Street, within an R5 zoning district; and

WHEREAS, the site is an “L”-shaped lot with 23.45 feet of frontage on 95<sup>th</sup> Avenue, 90.22 feet of frontage on 114<sup>th</sup> Street, and a total lot area of 3,471 sq. ft.; and

WHEREAS, the site was previously occupied by a pre-existing non-conforming two-story, one-family home with a floor area of 1,264 sq. ft. (0.36 FAR) with a front yard with a depth of 3’-0” along 95<sup>th</sup> Avenue, no front yard along 114<sup>th</sup> Street, and no side yard along the eastern lot line (the “Original Home”); and

WHEREAS, the applicant states that in 2006 the Original Home was enlarged and converted into a two-family home that added a 22’-0” wide by 20’-0” deep, two-story rear extension to the home, which increased the floor area of the subject home by 880 sq. ft. and extended the pre-existing non-complying front and side yards; and

WHEREAS, the applicant now seeks to legalize the subject two-story two-family home, which has the following parameters: a floor area of 2,144 sq. ft. (0.61 FAR) (a maximum floor area of 4,338.75 sq. ft. (1.25 FAR) is permitted); a front yard with a depth of 3’-0” along 95<sup>th</sup> Avenue and no front yard along 114<sup>th</sup> Street (two front yards, with minimum depths of 18’-0” and 10’-0”, respectively, are

required); no side yard along the eastern lot line (a side yard with a minimum width of 5’-0” is required); and a side yard with a width of 47’-0” along the northern lot line and (a side yard with a minimum width of 20’-0” is required); and

WHEREAS, the applicant states that the front and side yard relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the subject site is a narrow, irregularly-shaped corner lot; and

WHEREAS, the applicant represents that the subject lot is an irregular “L”-shaped lot with a width of approximately 22’-0”, which cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards with depths of 18’-0” and 10’-0”, respectively, and two side yards with minimum widths of 20’-0” and 5’-0”, respectively; and

WHEREAS, the applicant states that the building would have a maximum exterior width of 7’-0” and constrained floor plates if the front and side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front and side yard waivers are necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of the subject lot, the applicant states that there are no other similarly constrained lots within the immediately surrounding area, and this unusual shape limits the potential development and floor area at the site; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the subject home complies with all bulk requirements in the subject R5 district, with the exception of front yards and side yards; and

WHEREAS, the applicant submitted a yard study of corner lots in the surrounding area, which shows that the bulk configuration of the proposed home is nearly identical to each of the similarly situated corner lots at the subject intersection; and

WHEREAS, specifically, the yard study reflects that each of the existing buildings at the subject intersection provides no side yard abutting the adjacent building, and the side yard to the back side of each building is used for parking in the same manner as the subject site, with two of the three other corner lots developed with a comparable garage; and



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WHEREAS, the yard study further reflects that the front yards for the other sites at the subject intersection are also similar, with the front yard along the width of each lot limited to 3'-0", and with no front yard along the depth of each lot; and

WHEREAS, the applicant notes that the proposed legalization merely seeks to extend the Original Home's pre-existing non-complying front and side yards, and that the depth of the front yards along 95<sup>th</sup> Avenue and 114<sup>th</sup> Street and the width of the side yard along the eastern lot line for the proposed home are identical to that of the Original Home; and

WHEREAS, the applicant states that the subject home abuts the driveway of the adjacent home to the east, which provides a buffer between the homes despite the lack of a side yard along the eastern lot line; and

WHEREAS, the applicant also submitted a consent form signed by the owner of the adjacent home to the east, which the applicant states is an indication that the proposed lot line construction will not impact the adjacent home due to the location of the existing driveway; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, during the hearing process, the Board questioned whether the subject lot has existed as a single lot with the subject dimensions since prior to December 15, 1961; and

WHEREAS, in response, the applicant states that the subject lot was previously two lots that were merged into a single lot prior to December 15, 1961, and submitted copies of deeds establishing that the subject lot was created pursuant to a lot merger that took place on April 2, 1949, and has been in common ownership and occupied as a single lot since that date; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a result of the unique physical conditions cited above; and

WHEREAS, as noted above, the subject home complies with all bulk requirements, with the exception of front yards and side yards, and the FAR of the home is less than half what is permitted in the subject R5 zoning district; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, the legalization of a two-story two-family home that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§

23-45 and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 18, 2012"– (3) sheets and "June 8, 2012"– (4) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 2,144 sq. ft. (0.61 FAR); a front yard with a depth of 3'-0" along 95<sup>th</sup> Avenue; no front yard along 114<sup>th</sup> Street; a side yard with a width of 47'-0" along the northern lot line; and no side yard along the eastern lot line, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2012.

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## 13-12-BZ

### CEQR #12-BSA-069Q

APPLICANT – Georgios Georgopoulos, for Abumuktadir Rahman, owner.

SUBJECT – Application January 20, 2012 – Variance (§72-21) to permit the legalization and enlargement of a mosque (*Astoria Islamic Center*), contrary to front yard (§24-34), side yard (§24-35), and parking (§25-31) regulations. R5B zoning district.

PREMISES AFFECTED – 22-21 33<sup>rd</sup> Street, east side of 33<sup>rd</sup> Street, 200' south of corner formed by the intersection of Ditmars Boulevard and 33<sup>rd</sup> Street, Block 832, Lot 22, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Georgios Georgopoulos.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 17, 2012, acting on Department of Buildings Application No. 420303077 reads, in pertinent part:

1. Proposed side yard contrary to Zoning Resolution 24-35
2. Proposed front yard contrary to Zoning Resolution 23-45

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3. Proposed parking space waiver contrary to Zoning Resolution 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5B zoning district, the legalization of a change in use and the construction of an enlargement to a two-story building to be occupied by a mosque (Use Group 4), which does not comply with the underlying zoning district regulations for front yard, side yards, and parking for community facilities, contrary to ZR §§ 24-35, 23-45, and 25-31; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, and then to decision on September 25, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 1, Queens, recommends approval of the application; and

WHEREAS, certain community members provided testimony in support of the application; and

WHEREAS, certain community members provided testimony in opposition to the application, citing concerns about parking and traffic; and

WHEREAS, this application is being brought on behalf of the Astoria Islamic Center (the "Mosque"), a non-profit religious entity; and

WHEREAS, the subject site is located on the east side of 33<sup>rd</sup> Street between Ditmars Boulevard and 23<sup>rd</sup> Avenue within an R5B zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 100 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story building built for residential use, but now occupied by the Mosque; and

WHEREAS, the applicant proposes to legalize the conversion of the residential building to community facility use and for the proposed enlargement of the first and second floors and the addition of a third floor; and

WHEREAS, the applicant states that the existing building has the following parameters: a floor area of 1,658 sq. ft. (0.66 FAR); no front yard; a side yard with a width of 3'-0" along the eastern lot line, no side yard along the western lot line; and no parking spaces; and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 4,672 sq. ft. (1.86 FAR) (a maximum community facility floor area of 5,001.5 sq. ft. and 2.0 FAR is permitted); no front yard (a front yard with a minimum depth of 5'-0" is required); a side yard with a widths of 3'-0" along the eastern lot line of the front portion of the existing building and 8'-0" along the eastern lot line at the first- second- and third-floor enlargement, and a setback to 8'-0" at the new third floor (a side yard with a minimum width of 8'-0" is required); no side yard along the western lot line (a side yard with a minimum width of 8'-0" is required); and no parking (15 parking spaces is the minimum required); and

WHEREAS, the proposal provides for the following

uses: (1) storage and restrooms in the cellar; (2) the main sanctuary at the first floor; (3) additional worship area, including a worship gallery for female congregants at the second floor; (3) additional worship space and a caretaker's apartment at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mosque which necessitate the requested variances: (1) to accommodate the congregation of approximately 250 worshippers; (2) to provide a separate worship space for male and female congregants; and (3) to provide accessory space and a caretaker's apartment; and

WHEREAS, the applicant states that the congregation has occupied the pre-existing residential building since 1994 and that they require additional space to accommodate the congregation onsite; and

WHEREAS, the applicant further states that the current facility does not provide a separate gallery for female worshippers; and

WHEREAS, the applicant states that the requested waivers enable the Mosque to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, and an accessory caretaker's apartment; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, specifically, the applicant states that the requested yard waivers will allow the proposed mosque to provide floor plates large enough to accommodate its worshippers at full capacity, which is the minimum space required to provide the congregation with sufficient worship space; and

WHEREAS, the applicant notes that if both required side yards of 8'-0" each were provided, the remaining building width would be only 9'-0" and could not accommodate a suitable worship space and that the existing side yards (which are rendered non-complying due to the change in use from residential to community facility use) will remain and be extended except that a complying 8'-0" side yard will be provided along the eastern lot line at the new third floor; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building enlargement would result in a significantly smaller building with a worship space too constrained to accommodate the size of the congregation and accessory uses; and

WHEREAS, the applicant further states that the parking waiver is required because the small size of the lot and the existing building do not allow space for onsite parking; and

WHEREAS, the Board acknowledges that the Mosque, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

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WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Mosque coupled with the constraints of the existing building create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Mosque is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed enlargement will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that there are several three- and four-story buildings on the subject block and across the street from the subject site and that there is a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the adjacent buildings do not have the required front yard with a depth of 5'-0" and the existing building was built without a front yard with a depth of 5'-0"; and

WHEREAS, the Board inquired as to whether or not the third floor could be set back at the front and the applicant responded that setting it back would disturb the Islamic design of the façade which includes minarets that are ornamental and do not extend to the back of the building; and

WHEREAS, as to parking, the applicant notes that the use currently occupies the site and that all worshipers live within three-quarters of a mile from the site and walk to the site, so there will not be any parking demand; and

WHEREAS, further, the applicant notes that there are two metered parking lots nearby, including one across the street from the site and another 500 feet away, both with available public parking in the rare instance that a congregant drives to the site; and

WHEREAS, the Board notes that, based on the applicant's representation that all worshipers live within a three-quarter-mile radius of the site, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject

site; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Mosque could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant proposes to provide a set back with a width of 8'-0" along the eastern lot line of the new portions of the first and second floors and the new third floor, which respects the required minimum side yard width along that lot line; and

WHEREAS, the Board notes that the non-complying front yard and western side yard conditions are pre-existing; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mosque the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA069Q, dated June 15, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and

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grants a variance, to permit, on a site in an R5B zoning district, the legalization of a change in use and the construction of an enlargement to a two-story building to be occupied by a mosque (Use Group 4), which does not comply with the underlying zoning district regulations for front yard, side yards, and parking for community facilities, contrary to ZR §§ 24-35, 23-45, and 25-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 8, 2012" – (2) sheets, "Received June 15, 2012" – (2) sheets and "Received September 11, 2012" – (3) sheets; and *on further condition*:

THAT the building parameters will be: a maximum floor area of 4,672 sq. ft. (1.86 FAR); a maximum wall height of 30'-0" and total height of 33'-0"; a side yard with a width of 8'-0" at the first- and second-floor enlargement along the eastern lot line, and a setback of 8'-0" at the third floor along the eastern lot line, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 25, 2012.

## 97-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

## COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik, Barbara Cohen and Chris Taraglia.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for decision, hearing closed.

## 104-11-BZ

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.

## 192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

## COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik, Alex Vekster.

For Opposition: Kim Zangrillo and John Lafemina.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.

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## 9-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for continued hearing.

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## 43-12-BZ

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Raymond Levin.

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for deferred decision.

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## 61-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Richard Lobel and Shlomo Steve Wygoda.

For Opposition: Juan Reyes, Lora Tenenbaum, Tessa Grundon, Tony Krantz and Marna Lawrence.

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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## 66-12-BZ

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to permit a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations. R7A,R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121<sup>st</sup> Street and W. 122<sup>nd</sup> Street, Block 1948, Lot 30, 35, Borough of Manhattan.

### COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Frank Chaney.

For Opposition: Nancy Cabrera.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.

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## 73-12-BZ

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41<sup>st</sup> Avenue and 42<sup>nd</sup> Avenue, Block 6290, Lot 5, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for adjourned hearing.

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## 104-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for continued hearing.

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## 137-12-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133) regulations. M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73<sup>rd</sup> Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Carol Rosenthal, Debra Sale and Jeff Brand.

For Opposition: Stefanie Marezzi (conditional).

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for decision, hearing closed.

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## 152-12-BZ

APPLICANT–Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65’ southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for continued hearing.

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## 163-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30<sup>th</sup> Street, East 34<sup>th</sup> Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30<sup>th</sup> Street and First Avenue, Block 962, Lot 80, 108, 1001-1107, Borough of Manhattan.

### COMMUNITY BOARD #6M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for deferred decision.

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## 190-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.

### COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Donald Wilson.

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 1:30 P.M., for continued hearing.

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## 193-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vornado Realty Trust, owner; Soul Cycle 384 Lafayette Street, LLC, lessee.

SUBJECT – Application June 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Soul Cycle*) within a portion of an existing building. M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street (a/k/a 692 Broadway, 2/20 East 4<sup>th</sup> Street) southwest corner of intersection of Lafayette Street and E. 4<sup>th</sup> Street, Block 531, Lot 7401, Borough of Manhattan.

### COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.

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## 202-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1030 Southern Boulevard Realty Associates, owner; Blink Southern Boulevard, Inc., lessee.

SUBJECT – Application June 26, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building and special permit (§73-52) to permit the 25’-0” extension of the physical culture establishment use into a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1030 Southern Boulevard, east

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side of Southern Boulevard, 264' south of intersection of Westchester Avenue and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

**COMMUNITY BOARD #4BK**

APPEARANCES –

For Applicant: Todd Dale.

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M. for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**\*CORRECTION**

This resolution adopted on July 24, 2007, under Calendar No. 287-05-A and printed in Volume 92, Bulletin No. 29, is hereby corrected to read as follows:

**287-05-A**

APPLICANT – Evie Hantzopoulos/Astoria Neighborhood Coalition for 32-42 33<sup>rd</sup> Street LLC, owner.

SUBJECT – Application September 15, 2005 – Appeal seeking to revoke the Department of Buildings’ adoption of Technical Policy and Procedure Notice#5/98 and associated permit for the installation of cellular equipment on the roof of the subject site

PREMISES AFFECTED – 32-42 33<sup>rd</sup> Street, between Broadway and 34<sup>th</sup> Avenue, Block 612, Lot 53, Borough of Queens.

**COMMUNITY BOARD #1Q**

APPEARANCES – None.

**ACTION OF THE BOARD** – Application denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to a letter dated August 17, 2005, addressed to the appellant and to Councilmember Vallone that purports to be a final determination of the Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”); and

WHEREAS, the Final Determination states, in pertinent part:

This responds to your letter dated August 4, 2005 wherein you express concern about the proliferation of cellular antennas in the City and specifically question the Department’s justification for issuing a permit dated May 22, 2003 for the installation of cellular equipment at 32-42 33<sup>rd</sup> Street, Queens (the “Premises”), without a special permit from the Board of Standards and Appeals (the “BSA”).

This letter affirms the Department’s determination to permit the cellular antennas on the roof of the Premises without obtaining a special permit from BSA. While you correctly note that the Zoning Resolution § 22-21 provides that “telephone exchanges or other communication equipment structures” are permitted by special permit from the BSA, Included in this category are the telephone wires that extend across properties, and related telephone boxes that are often attached to buildings, in order to provide land telephone service to homes in a neighborhood. These wires and boxes have been routinely permitted for many years notwithstanding that the service they provide may not be limited solely, or even primarily, to the

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building or zoning lot on which they are situated. Likewise, on July 1, 1998, the Department issued Technical Policy and Procedure Notice #5/98 which recognized that cellular telephony had become a prevalent form of communication essential to the public interest and clarified the conditions under which small antennas and related equipment would not be classified “communication equipment structures.” The cellular installation that was permitted at the Premises meets the requirements of TPPN 5/98 and therefore is not subject to the requirement for a Special Permit from BSA.

We trust this responds to your inquiry. This is a final determination that may be appealed to the Board of Standards and Appeals.

WHEREAS, the Final Determination was provided in response to a letter dated August 4, 2005 from Councilmember Vallone and the appellant Astoria Neighborhood Coalition, Inc. (“Appellant”), which represents that it is a New York not-for-profit corporation, that requested a final determination with respect to the permit issued on May 22, 2003 for the cellular telephone equipment installed on the roof of the Premises so that this appeal could be filed; and

WHEREAS, the Appellant challenges DOB’s determination, in compliance with TPPN 5/98, that the installation of cellular telephone equipment on the roof of 32-42 33<sup>rd</sup> Street, Queens (the Premises) does not require a special permit pursuant to ZR § 22-21 from the Board; and

WHEREAS, a public hearing was held on this appeal on April 10, 2007, after due notice by publication in *The City Record*, with continued hearings on June 5, 2007 and July 17, 2007, and then to decision on July 24, 2007; and

WHEREAS, the premises had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, DOB and Omnipoint Communications, Inc. (“Omnipoint”), the owner of the cellular telephone equipment installed at the Premises, have been represented by counsel throughout this Appeal, and Appellant has been represented by one of its members, who lives in close proximity to the Premises; and

## PROCEDURAL HISTORY

WHEREAS, the Alteration Type 2 DOB permit for installation of the cellular telephone equipment (consisting of antennas and equipment cabinets) on the roof of the Premises was issued on May 22, 2003 pursuant to DOB Application No. 401572712; and

WHEREAS, installation of the equipment on the roof of the Premises was completed no later than January 2004; and

WHEREAS, after correspondence with Appellant and Councilperson Vallone, the Commissioner of DOB issued the Final Determination on August 17, 2005; and

WHEREAS, on September 15, 2005, the Appellant filed the instant appeal; and

WHEREAS, on April 11, 2006 Omnipoint filed a “Statement in Support of Dismissal”; and

WHEREAS, the Board declined to dismiss the appeal and held three hearings on the instant appeal prior to closing

the matter and setting a decision date of July 24, 2007; and

WHEREAS, the Board notes that it has in several instances granted extensions of time to Appellant; and  
SECTION 22-21 OF THE ZONING RESOLUTION AND THE SPECIAL PERMIT

WHEREAS, Z.R. § 22-21 lists uses that are permitted in residential districts by special permit pursuant to Z.R. § 73-14 from the Board of Standards and Appeals in residential districts; and

WHEREAS, in all residential districts, “Public utility or public service facilities” are permitted by special permit from the BSA; and

WHEREAS, furthermore, the specific enumeration of “public utility or public service facilities” includes “telephone exchanges or other communications equipment structures”; and

WHEREAS, Z.R. § 73-14 provides, in pertinent part, that:

In all *Residence Districts*, the Board of Standards and Appeals may permit . . . telephone exchanges or other communications equipment structures, provided that the following findings are made:

- (a) that such *use* will serve the residential area within which it is proposed to be located; that there are serious difficulties in locating it in a district wherein it is permitted as of right and from which it could serve the *residential* area, which make it necessary to locate such *use* within a *Residence District*; and

\* \* \* \* \*

The Board may prescribe appropriate conditions or safeguards to minimize adverse effects on the character of the surrounding area, including requirements that . . . any such use shall be landscaped; and

WHEREAS, Appellant contends that the cellular telephone equipment installed at the Premises falls within the category of “telephone exchanges or other communications equipment structures,” and it therefore requires a special permit from BSA, regardless of size; and

WHEREAS, DOB, as explained below, asserts that it has the authority under the New York City Charter to interpret or “clarify” the Zoning Resolution; and

## THE TPPN

WHEREAS, TPPN #5/98, dated July 1, 1998, reads, in pertinent part:

“The Department recognizes that cellular telephony has become a prevalent form of communication essential to the public interest. As such, those companies wishing to erect cellular antennas, and install related equipment are to be treated with the deference afforded other public utilities. Thus, to the extent the cellular antennas and related equipment meet the specifications and requirements set forth below, they are not subject to zoning. These specifications and requirements are based on



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the standards for cellular telephony at this time, and are designed to permit necessary and customary public utility service. To the extent the antenna and related equipment do not meet these criteria, they may be classified as Use Group 7 ‘communication equipment structures,’ and as such, may require a special permit in residence districts pursuant to Z.R. § 22-21.

1. The antennas must be attached to a building or other structure that has a use independent of supporting the antennas.
2. The antennas may not extend higher than six (6) feet above the height of the roof or parapet on the roof, or six feet above any penthouse or bulkhead, if placed on such penthouse or bulkhead.
3. The antennas shall each have an area no more than 8.45 square feet or one meter in diameter.
4. The related cellular equipment must not occupy more than 5% of the floor area on a zoning lot or 400 square feet”; and

WHEREAS, TPPN #5/98 contains additional Building Code requirements, which are not at issue in the instant appeal; and

WHEREAS, in April 2007, through both a review of plans and a physical inspection, DOB confirmed that the antennas and cabinets installed at the Premises comply with TPPN #5/98; and

WHEREAS, Appellant does not dispute that the antennas and other equipment fall within the category of equipment exempted from special permit requirements set forth in TPPN #5/98 but rather challenge the ability of the jurisdiction of DOB to issue the TPPN; and

## DISCUSSION

### A. DOB’s Authority to Interpret the Zoning Resolution

WHEREAS, Appellant argues that DOB’s issuance of TPPN #5/98 was beyond its authority and effectively changed the Zoning Resolution without going through the public process required for text amendment of the Zoning Resolution; and

WHEREAS, DOB asserts that the City Charter gives DOB the power to enforce the Zoning Resolution, and concomitant with the power to enforce or administer the Zoning Resolution is the power to clarify or interpret; and

WHEREAS, DOB further argues that TPPN #5/98 is a clarification, rather than a “variance” from the requirements of the Zoning Resolution; and

WHEREAS, Appellant in its April 24, 2007 submission provides a list of TPPNs printed from DOB’s web page at [www.nyc.gov](http://www.nyc.gov) as evidence that only TPPN #5/98 changes the Zoning Resolution instead of merely clarifying or interpreting it; and

WHEREAS, Appellant discusses none of the listed TPPNs or makes any attempt otherwise to distinguish them from TPPN #5/98; and

WHEREAS, Omnipoint points out that other TPPNs on the list submitted by appellants – specifically, TPPN #10/99

(setting a specific square footage minimum for determining whether a convenience store is accessory to an automotive service station) and TPPN #11/93 (setting criteria to qualify Pet Receiving Facilities similar to other veterinary medical facilities for use and siting purposes) – are analogous to TPPN #5/98 in carving out certain categories of uses for a different standard of regulatory scrutiny; and

WHEREAS, the Board notes that neither of the key phrases -- “telephone exchanges” or “communications equipment structures” – or their component words, is a defined term within the Zoning Resolution; and

WHEREAS, if DOB cannot interpret or define the phrases “telephone exchange” and “communications equipment structure,” it would not be possible for DOB to enforce ZR § 22-21; and

WHEREAS, furthermore, Omnipoint observes that § 641 of the City Charter gives broad authority to the Commissioner of DOB to regulate alterations of buildings and equipment, including “the regulation of electrical wires and wiring apparatus . . . used . . . for signaling, communication, alarm and data transmission in or on any building or structure . . .”; and

WHEREAS, although not dispositive on the issue of DOB’s authority to interpret the Zoning Resolution, Omnipoint also cites language from federal regulations, the Building Code and the Zoning Resolution that supports its position that the cellular telephone equipment at issue in the instant appeal is neither a “telephone exchange” nor a “communications equipment structure”; and

WHEREAS, both DOB and Omnipoint also cite In the Matter of Cellular Telephone Company, D/B/A Cellular One v. Armand Rosenberg, et al., 82 N.Y.2d 364 (1993) for the proposition that wireless carriers provide an essential public service and should be accorded favored treatment in matters of zoning; and

### B. DOB’s Interpretation of ZR § 22-21 in TPPN #5/98 is a Reasonable Exercise of its Authority to Interpret the Zoning Resolution

WHEREAS, DOB observes that in the six months between September 1, 2006 and February 28, 2007, it issued over 100 permits for cellular antennas in residential districts; and

WHEREAS, TPPN #5/98 was issued in response to the growing number of applications for permits to install cellular telephone equipment; and

WHEREAS, TPPN #5/98 has the effect of expediting the permitting by DOB of many small cellular telephone equipment installations that fall below the minimum specifications set forth in TPPN #5/98 and that are no more obtrusive than landline telephone poles and wires that do not require approvals from DOB or the Board; and

WHEREAS, only small installations, which are unlikely to have other significant impacts, fall within the ambit of TPPN #5/98; and

WHEREAS, given the limited requirement of the special permit set forth at Z.R. § 73-14 that the “telephone exchange or other communications equipment structures”

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serve the residential area in which they are located and that there are “serious difficulties” in locating them elsewhere, along with the nature of such cellular telephone antennas as are at issue in the instant appeal to serve only the area in which they are located, the siting of such small structures would be expected to be routine and therefore a proper area for DOB’s exercise of its authority to interpret the Zoning Resolution; and

WHEREAS, the Zoning Resolution does not define “telephone exchange” or “communications equipment structure” in such a way as to preclude DOB from exercising its authority to interpret the Zoning Resolution; and

WHEREAS, Omnipoint argues that the cellular telecommunications equipment at issue in this appeal is neither a “telephone exchange” nor a “communications equipment structure” and therefore not even within the scope of the special permit; and

WHEREAS, Omnipoint further points to Appellant’s omission of the word “structure” from its characterization of Z.R. § 22-21 in its April 24, 2007 submission in order to broaden the applicability of the special permit beyond the structures intended to be covered; and

WHEREAS, whether or not Omnipoint’s argument that the antennas in the instant case are not “structures” regulated under the special permit is correct, their small size and ubiquity make their status under the Zoning Resolution appropriate for clarification by DOB through TPPN #5/98; and

WHEREAS, at hearing, Omnipoint cited statistics indicating the level of integration of cellular communications into the New York telecommunications network, including usage of the particular cellular antennas at issue in the instant appeal, which included 1,443 “911” calls in 2006, and 1.6 million minutes of calls in 2007; and

WHEREAS, the effect of TPPN #5/98 is to streamline the siting process for small cellular telephone equipment installations, which provide a public benefit and which are now thoroughly integrated into the telephone communications network; and

WHEREAS, DOB explicitly recognized in TPPN #5/98 that cellular telephone equipment has become “a prevalent form of communication essential to the public interest”; and

WHEREAS, the Final Determination reiterates that “it has long been accepted that there are certain public utility uses that are so essential to the public interest and that are so incidental to the principal uses on the zoning lot, that they are not the intended subject of zoning use restrictions”; and

WHEREAS, in its submission of March 23, 2007, DOB states that, “[a]s cellular telephone service has become a service effectively comparable in ubiquity to traditional landline phone service, it is necessary and appropriate to treat cellular antenna facilities comparably to telephone wiring facilities, with the provisions of the Zoning Resolution being inapplicable to basic transmission facilities of reasonable, minimal size and scope as described in the TPPN”; and

WHEREAS, the Board finds that DOB reasonably

exercised its authority to interpret the Zoning Resolution in issuing TPPN #5/98 by permitting certain categories of cellular telephone equipment without requiring a special permit from the Board of Standards and Appeals; and

C. Prior BSA Decisions Do Not Contradict DOB’s Authority to Issue the TPPN

WHEREAS, Appellant argues that TPPN #5/98 removed cellular telecommunications equipment installations like the one at issue in the instant appeal from public review and BSA jurisdiction under Z.R. § 73-14; and

WHEREAS, the Board directed Appellant to provide evidence of its assertion that BSA has customarily granted special permits pursuant to Z.R. § 73-14 to such telecommunications equipment installations; and

WHEREAS, Appellant did not introduce any such evidence into the record; and

WHEREAS, Appellant cites BSA Cal. No. 631-87-BZ, which involved the issuance of a special permit for the installation of cellular telephone transmission equipment on and in a Queens building as precedent for requiring a special permit for installation of all rooftop cellular telephone transmission equipment; and

WHEREAS, the DOB objection on which BSA Cal. No. 631-87-BZ was based states:

The use of a portion of the cellar in an R4 Zone for a “telephone exchange or other communications equipment structure,” including roof mounted antennae, in Use Group 6 is contrary to Section 22-10 of the Zoning Resolution; and

WHEREAS, the language of the DOB objection makes clear that the denial was based on the equipment proposed to be installed in the cellar, and not on the antennas; and

WHEREAS, BSA Cal. No. 631-87-BZ, decided over ten years prior to the issuance of TPPN #5/98, is distinguishable from the matter in the instant appeal in that 1) it involved the installation of a substantial amount of equipment in the cellar of the building, 2) it would not fall within the exemption from special permit requirement created by TPPN #5/98, and 3) it arose during the early implementation of a cellular telephone network, and before either the federal Telecommunications Act of 1996 or before DOB had reasonably determined, based on the proliferation of cellular communications, that certain small cellular installations should not be required to go through the application process for a special permit from the Board; and

WHEREAS, even if the cellular equipment at issue in BSA Cal. No. 631-87-BZ were comparable to that giving rise to the instant appeal, DOB correctly notes and the Board agrees that cellular communications companies are always free to seek a special permit, as the TPPN does not – and could not – prohibit an applicant from seeking a special permit or prohibit the BSA from granting one; and

D. Federal Law

WHEREAS, Omnipoint, in its Statement in Support of Dismissal, cites the federal Telecommunications Act of 1996 (the “Act”) in support of its argument that Appellant lacks standing (a question not addressed by the Board herein); and

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WHEREAS, the Act specifically provides that “[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulation concerning such emissions, 47 U.S.C. § 332(c); and

WHEREAS, Omnipoint also cites Cellular Telephone Co. v. Oyster Bay, 166 F.3d 490 (2d Cir. 1999) and Reno v. ACLU, 521 U.S. 844, 857 (1997) for the general proposition that federal policy is to promote the availability of cellular communication; and

WHEREAS, although the Act explicitly limits local authority only with respect to regulating cellular transmission facilities on the basis of potential health effects; and

WHEREAS, TPPN #5/98, to the extent it makes the siting of small cellular telephone transmission facilities less burdensome, is consonant with federal policy; and

WHEREAS, in the absence of City legislation to regulate small cellular telecommunications installations, federal policy supports the rationale behind TPPN #5/98; and  
ISSUES NOT ADDRESSED IN THIS APPEAL

WHEREAS, in its “Statement in Support of Dismissal,” dated April 11, 2006, Omnipoint makes a number of arguments in support of dismissal of the instant appeal, including arguments based on statutory law and equitable principles; and

WHEREAS, in the interest of deciding the substantive issues presented by this appeal, the Board declines to rule on any of the above reasons for dismissal of the instant appeal; and

## CONCLUSION

WHEREAS, the Board finds that DOB acted within the scope of its authority in issuing TPPN #5/98; and

WHEREAS, the Board also finds that DOB acted reasonably in exercising its authority to interpret the Zoning Resolution in TPPN #5/98; and

WHEREAS, DOB’s clarification of Z.R. § 22-21 is consistent with its practice in issuing prior Technical Policy and Procedure Notices; and

WHEREAS, the Board declines to substitute its judgment for either that of DOB, which is charged with interpretation of the Zoning Resolution, or that of the City Council, which may act to provide citizens the opportunity to be heard on all matters, however small, involving the installation of cellular telephone equipment; and

*Therefore it is Resolved* that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated August 17, 2005, determining that the cellular telephone equipment installed at the Premises did not require a special permit from the Board of Standards and Appeals pursuant to Z.R. § 22-21, is hereby denied.

Adopted by the Board of Standards and Appeals, July 24, 2007.

**\*The resolution has been revised to correct the Applicant and Subject. Corrected in Bulletin Nos. 39-40, Vol. 97, dated October 3, 2012.**

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## \*CORRECTION

This resolution adopted on August 7, 2012, under Calendar No. 117-11-BZ and printed in Volume 97, Bulletin Nos. 32-33, is hereby corrected to read as follows:

### 117-11-BZ

#### CEQR #12-BSA-012Q

APPLICANT – Sheldon Lobel, P.C., for Sisters of St. Joseph, owners.

SUBJECT – Application August 15, 2011 – Variance (§72-21) to permit the development of a new athletic center accessory to an existing UG 3 school (*Mary Louis Academy*), contrary to maximum height and sky exposure plane (§24-521), minimum rear yard, (§24-382) minimum front yard (§24-34) and nameplates or identification signs (§22-321). R1-2 and R5 zoning districts.

PREMISES AFFECTED – 86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, block 9885, Lot 8, borough of Queens.

#### COMMUNITY BOARD # 8Q

APPEARANCES –

For Applicant: Richard Lobel.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 13, 2011, acting on Department of Buildings Application No. 420370486, reads in pertinent part:

Proposed Use Group 3 accessory athletic center building in R1-2 and R5 zoning districts:

Exceeds the maximum height permitted pursuant to ZR Section 24-521.

Exceeds the sky exposure plane required pursuant to ZR Section 24-521.

Proposed sign exceeds the maximum size permitted pursuant to ZR Section 22-321; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R1-2 zoning district and partially within an R5 zoning district, the construction of a two-story athletic center on the existing school campus, which does not comply with zoning regulations for height, sky exposure plane, and signage, contrary to ZR §§ 24-521 and 22-321; and

WHEREAS, a public hearing was held on this application on May 8, 2012, after due notice by publication in the *City Record*, with continued hearings on June 12, 2012 and July 17, 2012, and then to decision on August 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of the application; and

WHEREAS, this application is brought on behalf of The Mary Louis Academy (the “School”), a not for profit religious educational institution; and

WHEREAS, the site is located on a corner through lot bounded by Dalny Road to the west, Wexford Terrace to the south, and Edgerton Boulevard to the east, partially within an R1-2 zoning district and partially within an R5 zoning district; and

WHEREAS, the site has a lot area of 151,470 sq. ft.; and

WHEREAS, the site is currently occupied by several School buildings, including a three- and four-story main building fronting on Wexford Terrace (the “Main Building”), three accessory residences, and a two-story convent building fronting on Edgerton Boulevard (the “Convent Building”); combined, the School buildings have a total floor area of 131,215 sq. ft. (0.87 FAR); and

WHEREAS, the applicant proposes to demolish the approximately 19,000 sq. ft. (0.13 FAR) Convent Building and construct a new 25,139 sq. ft. (0.17 FAR) accessory athletic facility and wellness center (the “Athletic Center”) in its place, resulting in a combined floor area of 137,386 sq. ft. (0.91 FAR) on the entire site; and

WHEREAS, the applicant originally proposed to construct a 26,360 sq. ft. athletic facility which required additional waivers for non-complying front and rear yards; and

WHEREAS, at the direction of the Board, the applicant relocated the proposed building on the site so as to eliminate both the front yard and rear yard objections, and reduced the proposed floor area to 25,139 sq. ft.; and

WHEREAS, the applicant notes that the Convent Building no longer houses any residents, but the School occupies one wing for classrooms and administrative offices which will be relocated to the Main Building; and

WHEREAS, the proposed Athletic Center building will have the following non-compliances: two non-illuminated 50 sq. ft. identification signs (a maximum of 12 sq. ft. of identification signage is permitted); a height of 35’-0” (a maximum front wall height of 25’-0” is permitted in the R1-2 zoning district); and encroachment into the sky exposure plane for the R1-2 zoning district; and

WHEREAS, the Athletic Center will have the following uses: (1) a gymnasium, bleacher seating, fitness room, aerobics room, bathrooms, offices, and lobbies at the first floor; (2) an indoor jogging track at the mezzanine level; and (3) a multi-purpose room, viewing corridor, offices, locker rooms, and lobbies at the second floor; and

WHEREAS, because the proposed Athletic Center building does not comply with the underlying bulk regulations in the subject zoning districts, the requested variance is needed; and

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# MINUTES

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WHEREAS, the applicant states that the variance is necessary to meet the School's programmatic needs of (1) providing an athletic facility with a regulation-sized gymnasium and sufficient space to accommodate the student body; and (2) to provide identification signage large enough to enable visitors to locate the Athletic Center from the street; and

WHEREAS, the applicant states that the existing athletic facility is located within the Main Building and is only approximately 6,250 sq. ft., which does not provide sufficient space for the student body; and

WHEREAS, the applicant further states that the School's existing athletic facility has never been enlarged since opening in 1938, despite the growth of female athletics and the student body since that time; and

WHEREAS, specifically, the applicant states that the athletic program has increased by between 165 and 175 students over the last ten years, and there are typically between 290 and 405 students involved in athletics per school year; and

WHEREAS, the applicant states that the existing gymnasium in the Main Building does not provide sufficient space to comply with the Brooklyn/Queens Catholic High Schools Athletic Association regulations for court size, as a regulation court is 84'-0" by 50'-0" and the School's existing court is only 74'-0" by 38'-6"; and

WHEREAS, the applicant states that as a result of the substandard gymnasium, volleyball and basketball playoff games currently cannot be held at the School; and

WHEREAS, the applicant further states that, due to the space constraints of the existing athletic facility space in the Main Building, the track team is forced to practice in the hallways, the basketball teams have to use gyms at other schools, the cheerleading team has to practice in the auditorium, and other teams have to use classrooms for warm-up and training activities; and

WHEREAS, the applicant represents that the existing athletic facility conditions are also disruptive to school operations and cause practical difficulties for the school staff and general student body; and

WHEREAS, the applicant represents that in addition to athletics, the proposed Athletic Center will provide adequate facilities for physical education, including fitness and aerobics rooms in addition to the main gymnasium; and

WHEREAS, the applicant states that the Athletic Center will also provide space for other school functions, including parent meetings and major fundraising events; and

WHEREAS, the applicant states that the height and sky exposure waivers are required to meet the School's programmatic needs because, while the R5 zoning district permits the 35'-0" height of the proposed building, the portion of the site in the R1-2 zoning district is permitted to go to a maximum front wall height of 25'-0", which would not allow for construction of a two-story building with a double-height regulation size court and running track at the mezzanine; and

WHEREAS, the applicant submitted as-of-right plans reflecting that an athletic facility that complied with the

maximum height and sky exposure plane requirements would result in less than 20'-0" of ceiling clearance in the proposed gymnasium, while 25'-0" of clearance is required to support tournament play; and

WHEREAS, the applicant represents that the substandard gymnasium that would result under the as-of-right scheme would require the School's teams to travel more frequently to play games at regulation-sized gymnasiums and would limit the games that could be hosted at the School; and

WHEREAS, the applicant states that the requested waiver of sign regulations is also necessary to meet the programmatic needs of the School; and

WHEREAS, specifically, the applicant states that the proposed Athletic Center will be a separate building on the School's large campus, which has frontage on three different streets and contains the Main Building along with several other accessory structures in addition to the proposed Athletic Center; and

WHEREAS, the applicant notes that the proposed signage consists of two 50 sq. ft. signs with letters spelling "The Mary Louis Academy," in capital letters, located on the east and south sides of the Athletic Center; and

WHEREAS, the applicant represents that visiting sports teams, spectators, and parents attending meetings and fundraisers will need to locate the Athletic Center from the street and the requested signage is necessary for easy identification; and

WHEREAS, the applicant represents that providing complying identification signage with a maximum of 12 sq. ft. would result in signage that could not be readily seen and identified from the street; and

WHEREAS, the applicant further represents that placement of identification signage on both sides of the Athletic Center is necessary so that the signs can be seen from both Wexford Terrace and Edgerton Boulevard; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance,

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# MINUTES

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if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed two-story Athletic Center is comparable in terms of bulk with the existing four-story Main Building, which fronts on Wexford Terrace; and

WHEREAS, the applicant further states that the Athletic Center will be replacing the existing two-story Convent Building, which has a similar height and is in the same general location, thereby reducing the impact of the Athletic Center from the street view and upon neighboring properties; and

WHEREAS, the applicant notes that the Athletic Center will be located in the center of the site, and the closest adjacent property is 125'-0" to the north; and

WHEREAS, the applicant states that to the west of the site are several six- and seven-story residential buildings, and to the east directly across Edgerton Boulevard is a four-story monastery; and

WHEREAS, the applicant further states that the proposed signage is also appropriate in the surrounding area, as the monastery located directly across Edgerton Boulevard has similar identifying signage, and Hillside Avenue, which maintains a commercial character and corresponding signage, runs parallel to Wexford Terrace only one block to the south of the site; and

WHEREAS, the applicant also submitted photographs of existing identification signs located at the site and at the monastery across Edgerton Boulevard, and states that they are approximately the same size as the proposed signs; and

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant states that the proposed waivers are minimal and the height and sky exposure plane waivers only apply to the R1-2 portion of the site, and the proposed building will comply with all other bulk requirements of the underlying zoning district; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created, and that no development that would meet the programmatic needs of the School could occur given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, as noted above, the applicant revised its plans during the course of the hearing process by reducing the floor area and relocating the proposed building on the site in order to provide complying front and rear yards; and

WHEREAS, the Board finds that the requested relief is

the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA012Q dated March 13, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R1-2 zoning district and partially within an R5 zoning district, the construction of a two-story athletic center on the existing school campus, which does not comply with zoning regulations for height, sky exposure plane, and signage, contrary to ZR §§ 24-521 and 22-321, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 5, 2012" – (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a floor area of 25,139 sq. ft. (0.17 FAR); a height of 35'-0"; encroachment into the sky exposure plane; and two non-illuminated 50 sq. ft. identification signs, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT construction will proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

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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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2012.

**\*The resolution has been revised to correct the FAR on the 9<sup>th</sup> and 10<sup>th</sup> WHEREAS, which read: ... (1.48 FAR) and (1.58 FAR); now reads: ... (0.87 FAR) and (0.91 FAR).**

**Corrected in Bulletin Nos. 39-40, Vol. 97, dated October 3, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, Nos. 41-43

October 25, 2012

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### DIRECTORY

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# DOCKET

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New Case Filed Up to October 16, 2012  
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**285-12-BZ**

54 West 39th Street, south side of West 39th Street between Fifth Avenue and Avenue of the Americas., Block 840, Lot(s) 78, Borough of **Manhattan, Community Board: 5**. This application is filed pursuant to Section 73-36 of the Zoning Resolution, seeking a special permit to allow the operation of a physical culture establishment on the 4th floor of the existing building at the premises. M1-6 district.  
-----

**286-12-BZ**

1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue., Block 1399, Lot(s) 82, Borough of **Brooklyn, Community Board: 8**. Variance (§72-21) to permit to permit for a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story Use Group 4A House of Worship (the Church). Variances are required to maintain its existing lawful non-conforming lot coverage ratio (§24-11) and rear yard (§24-391) and waiver the minimum parking spaces (§25-30). R6 zoning district.  
-----

**287-12-A**

165 Reid Avenue, East side of Beach 201 Street, 335' north of Breezy Point Blvd., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. The proposed enlargement of the existing building located partially with in the bed of a mapped street contrary to General City Law Section 35 and the upgrade of an existing private disposal system is to the Department of Building policy. R4 zoning district.  
-----

**288-12-A**

319 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot(s) 2, Borough of **Staten Island, Community Board: 3**. Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36 . R3X (SRD) zoning district.  
-----

**289-12-A**

323 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue., Block 6843, Lot(s) 3, Borough of **Staten Island, Community Board: 3**. Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36 . R3X (SRD) zoning district.  
-----

**290-12-A**

327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot(s) 4, Borough of **Staten Island, Community Board: 3**. Proposed construction of three two family homes not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SRD) zoning district.  
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**291-12-BZ**

301 West 125th Street, northwest corner of intersection of West 125th Street and Frederick Douglas Boulevard., Block 1952, Lot(s) 29, Borough of **Manhattan, Community Board: 10**. Application for special permit to allow physical culture establishment within proposed commercial building. C4-4D(125) district.  
-----

**292-12-A**

19 Marion Walk, east side of Marion Walk, 125' north of Breezy Point., Block 16350, Lot(s) p/o400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing private disposal system in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. R4 district.  
-----

**293-12-BZ**

1245 83rd Street, north side of 83rd Street between 12th Avenue and 13th Avenue, Block 6302, Lot(s) 60, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to §23-141(b) (floor area regulations) and §23-461(a) (side yard requirements). R3X zoning district.  
-----

**294-12-BZ**

130 Clinton Street, between Joralemon Street and Aitken Place., Block 264, Lot(s) 17, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit a physical culture establishment. C5-2A/DB special zoning district. C5-2A DB district.  
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# DOCKET

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**295-12-BZ**

49-33 Little Neck Parkway, Little Neck Parkway and Bates Road., Block 8263, Lot(s) 110, Borough of **Queens, Community Board: 11.** Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.

-----

**296-12-BZ**

2374 Grand Concourse, northeast corner of intersection of Grand Concourse and East 184th Street., Block 3152, Lot(s) 36, Borough of **Bronx, Community Board: 5.** Special Permit (§73-36) to permit a physical culture establishment within existing building. C4-4 zoning district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**OCTOBER 30, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 30, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**95-90-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Bell Realty, owner; CVS Pharmacy, lessee.

SUBJECT – Application July 26, 2012 – Extension of Term of a previously approved variance (§72-21) which permitted retail (UG 6) with accessory parking for 28 vehicles which expired on January 28, 2012. R1-2 zoning district.

PREMISES AFFECTED – 242-24 Northern Boulevard, bounded by Northern Boulevard north of Douglaston Parkway, west and 243<sup>rd</sup> Street to the east, Block 8179, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**  
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**67-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for H.N.F. Realty, LLC, owner; Cumberland Farms, Inc. lessee.

SUBJECT – Application July 27, 2012 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on March 17, 2012; Waiver of the Rules. C1-2 zoning district.

PREMISES AFFECTED – 260-09 Nassau Boulevard, north corner of intersection formed by Little Neck Parkway and Nassau Boulevard, Block 8274, Lot 135, Borough of Queens.

**COMMUNITY BOARD #11Q**  
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**68-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**  
-----

**314-08-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 437-51 West 13<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 12, 2012 – Time to complete construction of a previously approved variance (§72-21) to permit the construction of a 12-story commercial building (office and UG10 retail). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13<sup>th</sup> Street, southeast portion of block bounded by West 13<sup>th</sup>, West 14<sup>th</sup> and Washington Streets and Tenth Avenue, Block 646, Lot 19, 20, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**APPEALS CALENDAR**

**88-12-A & 89-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., Van Wagner Communications, LLC

OWNER OF PREMISES – Name Mutual, LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in commercial district.

PREMISES AFFECTED – 462 11<sup>th</sup> Avenue, between 37<sup>th</sup> and 38<sup>th</sup> Streets, Block 709, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #4M**  
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**95-12-A & 96-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.

OWNER OF PREMISES – Calandra LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district.

PREMISES AFFECTED – 2284 12<sup>th</sup> Avenue, west side of 12th Avenue between 125<sup>th</sup> and 131<sup>st</sup> Streets, Block 2004, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #9M**  
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**99-12-A & 100-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

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# CALENDAR

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## COMMUNITY BOARD #2M

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### 101-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq. for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – Mazda Realty Associates.

SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5 zoning district.

PREMISES AFFECTED – 13-17 Laight Street, south side of Laight Street between Varick Street and St. John's Lane, Block 212, Lot 18, Borough of Manhattan.

### COMMUNITY BOARD #1M

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*Jeff Mulligan, Executive Director*

OCTOBER 30, 2012, 1:30 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 30, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### 55-12-BZ

APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based not for profit school (*Kollel L'Horoah*) which is contrary to §42-00. M1-2 zoning district.

PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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### 67-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.

SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment from the first to the second floor, contrary to ZR §32-421. C1-9 zoning district.

PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1<sup>st</sup> Avenue and East 75<sup>th</sup> Street, Block 1469, Lot 46, Borough of Manhattan.

### COMMUNITY BOARD #8M

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### 112-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Raymond B. and Colleen Olsen, owners.

SUBJECT – Application April 23, 2012 – Special Permit (§73-621) for the enlargement of an existing one-family dwelling that will decrease the open space ratio contrary to ZR §23-141. R2 zoning district.

PREMISES AFFECTED – 244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue, Block 444, Lot 15, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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### 154-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Caroline Teitelbaum and Joshua Teitelbaum, owners.

SUBJECT – Application May 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141);

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# CALENDAR

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side yards (ZR §23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1202 East 22<sup>nd</sup> Street, west side of East 22<sup>nd</sup> Street between Avenue K and Avenue L, Block 7621, Lot 59, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**209-12-BZ**

APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.

SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.

PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**241-12-BZ**

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new residential building with residential and retail use below the level of the second story contrary to §42-10 and §42-14D(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

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**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 16, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**301-85-BZ**

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment of a variance (§72-21) which permitted limited retail use in the ground floor and cellar retail within a five story and penthouse residential building. The amendment seeks to expand the uses conditioned by the Board to include other retail (UG 6) uses. R10 (PI) zoning district.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance to permit certain retail uses (Use Group 6) at the first floor of a six-story (including penthouse) building within a residential zoning district; and

WHEREAS, a public hearing was held on this application on July 24, 2012 after due notice by publication in the *City Record*, with a continued hearing on August 21, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, representatives of Carnegie Hill Neighbors and certain members of the community provided testimony in opposition to this application (hereinafter, the "Opposition"), raising the primary concern that the proposed expansion of the permissible Use Group 6 uses at the site would be detrimental to the surrounding neighborhood character; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, the site is located on the south side of East

86<sup>th</sup> Street between Madison Avenue and Park Avenue, in an R10 zoning district within the Special Park Improvement District; and

WHEREAS, the site is occupied by a six-story (including penthouse) mixed-use building with ground floor retail use and with residential use above; and

WHEREAS, on February 11, 1986, under the subject calendar number, the Board granted a variance to permit the ground floor of the subject building to be occupied by certain retail uses (Use Group 6) limited to the following: a beauty parlor, art gallery, or clothing store; and

WHEREAS, subsequently, the grant has been amended and the term extended on various occasions; and

WHEREAS, most recently, on August 22, 2006, Board granted a 15-year extension of term, to expire on February 11, 2021; and

WHEREAS, the applicant now requests an amendment to permit: (1) the expansion of the uses permitted to occupy the ground floor to include a bank, drug store, optician, a sporting goods store, and a bicycle sales, rental or repair shop; and (2) an expansion of the permitted days of operation from Monday through Saturday to seven days per week; and

WHEREAS, the applicant states that the ground floor of the subject building was leased to a beauty parlor on September 1, 1986, and that this business has occupied the site continuously since that time; and

WHEREAS, the applicant submitted a letter from the owner of the building stating that the current tenant (the beauty parlor) may choose not to renew its lease, in which case the limitation of the permitted Use Group 6 uses to beauty parlor, art gallery, and clothing store would be detrimental to renting the space; and

WHEREAS, the applicant further states that the ground floor of the subject building has been occupied by a commercial use since before the enactment of the 1916 Zoning Resolution, and that the building is located only 13 feet east of a C5-1 zoning district; and

WHEREAS, the applicant represents that the requested additional Use Group 6 uses were selected based on consultations with real estate brokers concerning other possible retail uses that would be similarly compatible with the neighborhood as the existing beauty parlor has been; and

WHEREAS, as to the request to expand the permitted days of operation from six to seven, the applicant states that the ground floor retail space is currently permitted to operate Monday through Saturday, from 9:00 a.m. to 8:00 p.m., and that it now seeks to also operate on Sundays, from 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant submitted a table reflecting all of the commercial uses on East 86<sup>th</sup> Street between Fifth Avenue and Lexington Avenue and their days and hours of operation, which reflects that most stores are open from approximately 11:00 a.m. to 6:00 p.m. on Sundays; accordingly, the proposed hours of operation would be consistent with other commercial stores in the area; and

WHEREAS, the Opposition contends that the proposed expansion of the permitted Use Group 6 uses at the site would



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have a negative impact on the surrounding neighborhood character; and

WHEREAS, specifically, the Opposition argues that the mid-block portion of the subject block is distinctly residential in character and that the subject site is the only commercial presence on the subject block within the R10 district; and

WHEREAS, the Opposition states that, while it does not object to the request to permit Sunday hours at the site or to expand the permitted uses on the site to include an optician, the impact of increased commercial traffic, increased lighting, or increased utilization of display windows that could result from the other uses proposed by the applicant would have a detrimental impact on the residential character of the area; and

WHEREAS, in response to the concerns raised by the Opposition, the applicant revised its proposal to remove the requested bicycle sales, rental, or repair shop from the requested uses on the site; and

WHEREAS, the Opposition expressed additional concerns that a bank use at the site would present after-hours security issues on the block, and a drug store use could result in "mission creep" whereby drug stores expand their sales to convenience items and food, including prepared take-out items such as sandwiches; and

WHEREAS, the Board finds that, given the security concerns raised by the Opposition, the retail uses permitted on the ground floor should not be expanded to include the proposed bank use, which the applicant indicates would include ATM use on the interior of the bank accessible by cardholders after hours; and

WHEREAS, however, the Board finds that the optician, sporting goods store, and drug store uses proposed by the applicant would not negatively impact the surrounding area, particularly given the multitude of commercial uses in the vicinity of the site and the small footprint of the subject building which limits the types of drug stores and sporting goods stores that can make use of the site; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated February 11, 1986, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received May 8, 2012'-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on February 11, 2021;

THAT the uses on the first floor will be limited to beauty parlor, art gallery, clothing store, drug store, optician, and sporting goods store (not including bicycle sales, rental, or repair);

THAT the hours of operation will be limited to: Monday through Saturday, from 9:00 a.m. to 8:00 p.m.; and Sunday, from 11:00 a.m. to 6:00 p.m.;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions will be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

(Alt. 121027405)

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 194-02-BZ

APPLICANT – Sheldon Lobel, P.C., for Shore Plaza LLC, owner; Staten Island Fitness Group, LLC, lessee.

SUBJECT – Application May 16, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*Planet Fitness*) which expired on December 1, 2011; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 1775 South Avenue, southeast corner of the intersection formed by Meredith and South Avenues, Block 2800, Lot 37, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on December 1, 2011; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the PCE is located on a triangularly-shaped lot on the south side of South Avenue between the West Shore Expressway and Meredith Avenue, within a C4-3 zoning district; and

WHEREAS, the zoning lot has a total area of approximately 777,000 sq. ft. and is occupied by the "West Shore Plaza" shopping center; and

WHEREAS, the PCE occupies approximately 15,000

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# MINUTES

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sq. ft. of floor area located in the southwest corner of the shopping center; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 25, 2003 when, under the subject calendar number, the Board granted a special permit to legalize a PCE in the subject building for a term of ten years, to expire on December 1, 2011; and

WHEREAS, on June 22, 2006, the Board issued a letter of substantial compliance which approved certain minor modifications to the previously-approved plans, and a change in ownership and operation of the PCE from Johnny Lat's Gym to Planet Fitness; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on March 25, 2003, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from December 1, 2011, to expire on December 1, 2021, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received May 16, 2012'-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 1, 2021;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 500522534)

Adopted by the Board of Standards and Appeals, October 16, 2012.

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### 330-05-BZ

APPLICANT – Vito J. Fossella, P.E., LPEC, for Frank Bennett, owner.

SUBJECT – Application February 29, 2012 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*AF Bennett Salon and Wellness Spa*) which expired on January 30, 2102; Extension of Time to Complete Construction which expired on January 30, 2011; amendment to further

enlarge the PCE into the neighboring cellar; Waiver of the Rules. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 350 New Dorp Lane, south side of New Dorp Lane, 260' east of corner formed by the intersection of New Dorp Lane and Clawson Avenue, Block 4221, Lot 53, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (PCE), an extension of time to complete construction, and an amendment to permit the enlargement of the PCE; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the PCE is located on the south side of New Dorp Lane between Clawson Street and Hylan Boulevard, within a C2-2 (R3-2) zoning district; and

WHEREAS, the zoning lot has a total area of 5,670 sq. ft. and is occupied by two one-story and cellar buildings, one at 346 New Dorp Lane (the "346 Building"), and one at 350 New Dorp Lane (the "350 Building"); and

WHEREAS, the applicant represents that the PCE is located in the entirety of the 350 Building and in the cellar of the 346 Building (the first floor of the 346 Building is currently occupied by a photography store); and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 30, 2007 when, under the subject calendar number, the Board granted a special permit to legalize the PCE in the 350 Building and to permit the expansion of the PCE to include 1,284 sq. ft. of floor space in the cellar of the 346 Building, for a total of 7,210 sq. ft. of floor space within the two buildings, for a term of five years, to expire on January 30, 2012; and

WHEREAS, pursuant to ZR § 73-70, substantial construction was to be completed within four years; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years, and to extend the time to complete construction; and

WHEREAS, the applicant states that substantial construction was not completed as of the stipulated date because construction was delayed due to financial hardship

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resulting from difficulty in obtaining a construction loan following the Board's grant; and

WHEREAS, however, the applicant states that the owner has now obtained a construction loan and is prepared to proceed with construction; and

WHEREAS, the applicant also requests an amendment to permit the further expansion of the cellar by approximately 600 sq. ft., for a total of approximately 7,810 sq. ft. of total PCE floor space within the two buildings; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term, extension of time, and amendment are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on January 30, 2007, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from January 30, 2012, to expire on January 30, 2022, to grant an extension of time to complete construction and obtain a certificate of occupancy for two years from the date of this grant, to expire on October 16, 2014, and to permit the noted modifications to the approved plans, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received February 29, 2012'-(2) sheets and 'August 2, 2012'-(1) sheet; and *on further condition*:

THAT the term of this grant will expire on January 30, 2022;

THAT there will be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions will be listed on the certificate of occupancy;

THAT substantial construction will be completed and a certificate of occupancy obtained by October 16, 2014;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

(DOB Application No. 500809084)

Adopted by the Board of Standards and Appeals, October 16, 2012.

## 299-82-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.

SUBJECT – Application May 4, 2012 – Amendment to a previously granted variance (§72-21) which allowed a

residential building. Proposed amendment would permit a new mixed use hotel and residential building on the subject zoning lot. C6-1 zoning district.

PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2,200, Borough of Manhattan.

## COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for decision, hearing closed.

## 271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

## COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to October 30, 2012, at 10 A.M., for adjourned hearing.

## 84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.

SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted professional offices (Use Group 6) in a residential building which expires on September 15, 2012. R4A zoning district.

PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

## COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

## 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3"northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block

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6344, Lot 69, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for deferred decision.

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### 302-01-BZ

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

## COMMUNITY BOARD #3BX

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

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### 189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233<sup>rd</sup> Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233<sup>rd</sup> Street, southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

## COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

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### 141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60<sup>th</sup> Street, corner of 21<sup>st</sup> Avenue and 60<sup>th</sup> Street, Block 5521, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 162-11-A

APPLICANT – Akerman Senterfitt, LLP, for 179 Ludlow Holding LLC, owners.

SUBJECT – Application October 17, 2011 – Appeal seeking a common law vested right to continue construction commenced under prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot 26, Borough of Manhattan.

## COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-story mixed-use commercial/residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, with continued hearings on April 3, 2012, May 1, 2012, and September 11, 2012, and then to decision on October 16, 2012; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of Ludlow Street between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the site has 23.83 feet of frontage on Ludlow Street, a depth of 87.83 feet, and a total lot area of approximately 2,093 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use commercial/residential building with a floor area of 9,652 sq. ft. (4.6 FAR) (the “Building”); and

WHEREAS, the subject site is currently located within a C4-4A zoning district, but was formerly located within C6-1 zoning district; and

WHEREAS, the Building complies with the former C6-1 zoning district parameters, specifically with respect to floor area ratio (“FAR”); and

WHEREAS, however, on November 19, 2008 (the “Rezoning Date”), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site to C4-4A, as noted above; and

WHEREAS, the Building does not comply with the C4-4A zoning district parameters as to FAR; and

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WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Rezoning Date and that the work was performed pursuant to such permit; and

WHEREAS, the Board notes that Alteration Permit No. 104385746-01-AL was issued on March 24, 2006 (the "Permit"), authorizing the renovation of the existing two-story building, the conversion of the second floor residential use to commercial use, and the addition of floors three to seven for residential use, pursuant to C6-1 zoning district regulations; and

WHEREAS, the applicant states that construction was not completed as of the Rezoning Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the Permit pursuant to ZR § 11-332 within 30 days of its lapse on the Rezoning Date, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letters dated April 4, 2012 and July 20, 2012, DOB stated that it issued a letter of intent to revoke the permit after an audit revealed an objection related to egress; and

WHEREAS, in response, the applicant met with DOB and revised its plans to address the egress objection; and

WHEREAS, by letter dated September 24, 2012, DOB stated that it removed the egress objection on August 28, 2012, and that the Permit was lawfully issued and there are no outstanding objections; and

WHEREAS, the Board has reviewed the record and concludes that the Permit was lawfully issued to the owner of the subject premises prior to the Rezoning Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance"; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term

which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as to substantial construction, the applicant states that the owner has completed the following: the superstructure, exterior walls, and interior rooms; and certain interior finishes; and

WHEREAS, the applicant submitted an affidavit from the general contractor stating that the construction completed at the site prior to the Rezoning Date constitutes approximately 72 percent of the total work for the project; and

WHEREAS, the applicant represents that the only remaining construction for the Building includes the installation of finishes in the kitchens and bathrooms, installation of fire alarm, sprinkler, and HVAC systems, and completion of the elevator shaft, balconies, roof, and facade; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: an existing construction estimate, an affidavit from the general contractor; and photographs of the site from prior to the Rezoning Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed prior to the Rezoning Date; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$1,587,384, including hard and soft costs and irrevocable commitments, out of \$2,649,906 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted a construction affidavit estimate; and

WHEREAS, thus, the expenditures up to the Rezoning Date represent approximately 60 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board considers not only whether certain improvements and expenditures could

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not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that in order to bring the existing structure into compliance with the current C4-4A zoning district, the owner would be required to remove the roof, hand demolish the top floor and a half of the building, relocate the bulkhead, construct a new roof, and redesign the units before completing the building, which is estimated to cost \$1,463,984.73, or approximately \$373,000 more than the estimated cost of completing the proposed building under the prior C6-1 zoning district requirements; and

WHEREAS, the applicant further states that it would lose the income from the removed units, estimated at \$1,300,000; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any complying construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Rezoning Date.

WHEREAS, accordingly, the Board finds that the applicant has met the test for a common law vested rights determination, and therefore has the right to continue construction on the site pursuant to the zoning regulations in place prior to the Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Alteration Permit No. 104385746-01-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, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 46-12-A

APPLICANT – Eric Palatnik, P.C., for Tremont Three, LLC, owner.

SUBJECT – Application March 1, 2012 – Application to permit a mixed use development located partially within the bed of a mapped but unbuilt street (East Tremont Avenue), contrary to General City Law Section 35. C4-5X/R7X zoning district.

PREMISES AFFECTED – 4215 Park Avenue, north side of East Tremont Avenue, between Park and Webster Avenues, Block 3027, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #6BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated September 10, 2012, acting on Department of Buildings Application No. 220157700, reads:

Proposed development which rests partially within the bed of the mapped street is contrary to GCL section 35 and therefore must be referred to NYC BSA; and

WHEREAS, this is an application under General City Law (“GCL”) § 35, to permit the construction of a mixed-use multiple dwelling partially within the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on July 17, 2012, after due notice by publication in *The City Record*, with a continued hearing on September 25, 2012, and then to decision on October 16, 2012; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on a corner through lot bounded by Webster Avenue to the west, East Tremont Avenue to the South, and Park Avenue to the east, partially within a C4-5X zoning district and partially within an R71- zoning district; and

WHEREAS, the site has a total lot area of 52,335 sq. ft., with approximately 7,000 sq. ft. of lot area located within the bed of the mapped but unbuilt East Tremont Avenue; and

WHEREAS, by letter dated May 22, 2012, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated March 20, 2012, the Department of Environmental Protection (“DEP”) requests that the applicant submit a survey/plan which provides (1) the width of the mapped East Tremont Avenue and the width of the widening portion of the street; and (2) distances from the lot line to the 12-inch diameter combined sewer and the 12-inch diameter City water main in East Tremont Avenue between Webster Avenue and Park Avenue; and

WHEREAS, in response, the applicant submitted a survey as requested by DEP, which shows the 100-ft. width of the traveled portion of East Tremont Avenue, which DEP determined will be sufficient for the maintenance and/or reconstruction of the existing 12-inch diameter combined sewer and the 12-inch diameter City water main in the bed of East Tremont Avenue between Webster Avenue and Park Avenue; and

WHEREAS, by letter dated July 23, 2012, DEP states that it has no objection to the proposed application; and

WHEREAS, by letter dated March 28, 2012, the

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Department of Transportation (“DOT”) states that due to the scale of the project, a Uniform Land Use Review Procedure (“ULURP”) action to demap this portion of East Tremont Avenue is more appropriate since the improvement of East Tremont Avenue at this location, would involve the taking of a portion of the applicant’s property, is not presently included in DOT’s Capital Improvement Program and DOT does not have any intention to acquire it in the future; and

WHEREAS, in response, the applicant states that GCL § 35 empowers the Board to grant a permit for construction in the bed of a mapped street where a proposed street widening or extension has been shown on the official map or plan for ten years or more and the City has not acquired title thereto; accordingly, the applicant represents that the Board is the proper venue for the subject application to permit construction in the bed of a mapped street and it is not required to undertake a ULURP action to demap this portion of East Tremont Avenue; and

WHEREAS, the applicant notes that by letter dated January 26, 2010 the owner consulted DOT to request a review of the subject project, and in response DOT issued a letter dated February 12, 2010 stating that the improvement of East Tremont Avenue at this location is not presently included in DOT’s Capital Improvement Program and instructed the owner that “[i]n order for you to develop your property within the proposed widening...you are required to submit an application to the Board of Standards and Appeals (BSA) in accordance with Chapter 35 of the General City Law...”; and

WHEREAS, therefore, because the City has no plans to improve or widen the referenced street, the applicant requests that the Board approve the subject application to permit construction in the bed of the mapped but unbuilt street pursuant to GCL § 35; and

WHEREAS, the Board agrees with the applicant that the subject application is properly before the Board and does not require a ULURP action to demap the street; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Bronx Borough Commissioner, dated September 10, 2012, acting on Department of Buildings Application No. 220157700, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 11, 2012”– (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 196-12-A

APPLICANT – Deidre Duffy, for Breezy Point Cooperation, Inc., owner; Carol Anderson, lessee.

SUBJECT – Application June 19, 2012 – Proposed alteration and enlargement of an existing single family home, not fronting on a legally mapped street, contrary to General City Law, Section 36. R4 zoning district.

PREMISES AFFECTED – 26 Ocean Avenue, west side of Ocean Avenue, 492.25' north of Rockaway Point Boulevard. Block 16350, Lot 300. Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 21, 2012, acting on Department of Buildings Application No. 420565622, reads in pertinent part:

A1– The street giving access to the existing building to be altered and enlarged is not duly placed on the official map of the City of New York, therefore:

A) A Certificate of Occupancy may not be issued as per Article 3, section 36 of the General City Law

B) The Building to be altered and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 27-291 of the of the Administrative Code of the City of New York, and

A-2– The proposed upgraded private disposal system is in the bed of a service lane contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated August 28, 2012, and updated on September 12, 2012, the Fire Department states that because the enlargement of the existing building is less

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than 125 percent of the existing square footage, the Fire Department has no objections provided that hard-wired, interconnected smoke detectors are installed throughout the building in compliance with Building Code § 907.2.10 prior the issuance of any Certificate of Occupancy; and

WHEREAS, in response, the applicant submitted plans reflecting that the smoke detectors will be installed in accordance with the Fire Department's request; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated May 21, 2012, acting on Department of Buildings Application No. 420565622 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received September 21, 2012"- one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT hard-wired, interconnected smoke detectors will be installed in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2012.

## 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

### COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to

November 20, 2012, at 10 A.M., for decision, hearing closed.

## 21-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

### COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for decision, hearing closed.

## 151-12-A

APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.

SUBJECT – Application May 9, 2012 – Appeal challenging the Department of Buildings' determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district.

PREMISES AFFECTED – 231 East 11<sup>th</sup> Street, north side of E. 11<sup>th</sup> Street, 215' west of the intersection of Second Avenue and E. 11<sup>th</sup> Street, Block 467, Lot 46, Borough of Manhattan.

### COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



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**REGULAR MEETING  
TUESDAY AFTERNOON, OCTOBER 16, 2012  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**168-11-BZ**

**CEQR #12-BSA-037K**

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Bet Yaakob, Inc.*), contrary to floor area (§§113-11, 503, 51, 77-02, 23-141, 24-11), open space and lot coverage (§§23-141, 24-11, 77-02, 113-11), front, side and rear yard (§§113-11, 503, 543, 77-02, 23-464, 47, 471), height and setback (§§113-11, 503, 55, 77-02, 23-631, 633, 24-593), planting and landscaping (§§113-12, 23-45, 23-451, 113-30) and parking (§§113-58, 25-31) regulations.

R5, R6A, and R5 (Ocean Parkway Special District) zoning district.

PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

Proposed community facility (Use Group A-3 house of worship) building in an R5 (OP Special District), R6A (OP Special District) and R5 (Subdistrict within OP Special District) does not comply with the following bulk regulations:

1. Proposed Floor Area Ratio (FAR) exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11 and 24-17
2. Proposed Open Space Ratio (OSR) is less than minimum required pursuant to ZR Sections 113-11, 23-141, 24-11, 113-503
3. Proposed lot coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11, 24-17, 113-503
4. Proposed front yard is less than front yard

- required pursuant to ZR Sections 113-12, 23-45, 23-451, 113-11, 24-351, 23-633
5. Proposed side yards are less than side yards required pursuant to ZR Sections 113-11, 23-464, 113-543 and 23-361
6. Proposed rear yard is less than rear yard required pursuant to ZR Sections 113-11, 23-471, 23-543, 113-544, 23-53
7. Proposed height and setback exceeds the minimum required pursuant to ZR Sections 113-11, 23-631, 24-593, 23-633
8. Proposed side and rear yard setbacks exceed the minimum required pursuant to ZR Sections 113-11 and 23-662
9. Proposed development violates front yard planting requirements as per ZR Sections 113-12, 23-45 and 23-451
10. Proposed development violates special landscaping regulations as per ZR 113-30
11. Proposed development provides less than required parking spaces as per ZR Sections 113-561, 25-31 and 25-35; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, City Council Member Domenic Recchia provided testimony in support of the proposal; and

WHEREAS, a neighbor initially provided opposition to the proposal, but did not submit continued testimony; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the “Synagogue”), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is an L-shaped corner lot fronting Ocean Parkway and Avenue U, with frontages of approximately 50 feet along Ocean Parkway and 143 feet

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along Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, the subject site has a lot area of 8,840 sq. ft. with 6,500 sq. ft. in the R5 (Special Ocean Parkway District), 1,800 sq. ft. in the R6A (Special Ocean Parkway District), and 540 sq. ft. in the R5 (Special Ocean Parkway Subdistrict); and

WHEREAS, the subject site, which was formerly two separate lots – 48 and 50 – was occupied by two two-story homes, which were demolished in anticipation of construction at the site; and

WHEREAS, the applicant proposes the following parameters: four stories; a floor area of 20,361 sq. ft. (2.30 FAR) (a maximum community facility floor area of 14,335 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.62 FAR is permitted); a lot coverage of 79 percent (maximum permitted lot coverage ranges from 55 to 60 percent); an open space of 21 percent (the minimum required open space ranges from 40 to 45 percent); a maximum wall height of 60'-0" and a maximum total height of 62'-4" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); and no parking spaces (a minimum of 17 parking spaces are required); and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a rear yard with a depth of 4'-0" on the corner portion (a rear yard with a depth of 8'-0" is required on the corner portion); the required rear yard with a depth of 30'-0" on the interior portion of the lot, but no front yard in the interior portion of the lot (a front yard with a depth of 10'-0" is required); and

WHEREAS, the proposal provides for the following uses: (1) a social hall and small kitchen at the cellar level; (2) the daily sanctuary and men's mikvah at the first floor; (3) the main sanctuary on the second floor; (4) additional worship area, including a worship gallery for female congregants at the third floor; and (5) a board room and two offices on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would allow for a social hall of only 1,197 sq. ft. (to accommodate 80 people); a daily sanctuary of only 542 sq. ft. (to accommodate 37 people); and a main sanctuary of only 1,183 sq. ft. (to accommodate 95 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that the necessary women's balcony and men's mikvah could not be provided in an as-of-right scheme; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the third floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 80'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost

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portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition contribute to the hardship at the site; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 4'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 80'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, during the hearing process, the Board directed the applicant to review the design of the rear of the building to determine if it could be shortened and to explain the mechanical space needs; and

WHEREAS, in response, the project architect explained how each element of the building design is required; specifically, he explained that as much mechanical use as possible had been relocated to the mechanical mezzanine and that it would not be able to relocate additional use from the rear of the building to the roof of the building above the fourth floor; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA037K, dated May 31, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront

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Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 8, 2012" – (16) sheets; and *on further condition*:

THAT the building parameters will be: four stories; a maximum floor area of 20,361 sq. ft.; a maximum wall height of 60'-0" and total height of 62'-4"; a minimum open space of 1,866 sq. ft.; and a maximum lot coverage of 6,968 sq. ft. (79 percent), as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant

laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2012.

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**2-12-BZ**

**CEQR #12-BSA-058Q**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Tehjila Development, LLC, owner.

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29' south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

**COMMUNITY BOARD #9Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 20, 2012, acting on Department of Buildings Application No. 420283375, reads in pertinent part:

Proposed 3 feet side yards is contrary to ZR 23-48.

The required side yards as per said section is 5 feet.

Proposed number of parking spaces is contrary to ZR 25-21. The required number of parking spaces as per said section is two (2) and the proposed number of spaces is none (0); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; and

WHEREAS, a public hearing was held on this application on August 7, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 11, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 9, Queens, recommends disapproval of this application, citing concerns that the proposed home would compromise the light and air of adjacent homes, and that the hardship is self-created; and

WHEREAS, New York City Council Member Ruben Wills recommends disapproval of this application, citing

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concerns with its effect on the character of the neighborhood; and

WHEREAS, the site is located on the west side of 115<sup>th</sup> Street between 95<sup>th</sup> Avenue and 101<sup>st</sup> Avenue, within an R5 zoning district; and

WHEREAS, the site has a width of approximately 20 feet, a depth of 92 feet, and a total lot area of 1,842 sq. ft.; and

WHEREAS, the site is currently occupied by a single-story storage structure; and

WHEREAS, the applicant proposes to demolish the existing structure and construct a three-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: a floor area of 2,184 sq. ft. (1.19 FAR); a lot coverage of 39.5 percent; a front yard with a depth of 10'-0"; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; and a total height of 31'-7"; and

WHEREAS, however, the applicant proposes two side yards with a width of 3'-0" each (two side yards with a minimum width of 5'-0" each are required); and no parking spaces (two parking spaces are the minimum required); and

WHEREAS, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home in order to make it more compatible with the heights of surrounding homes, and removed the parking space from the front yard, thereby removing the non-compliance related to the location of the parking space; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a two-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this assertion, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the three adjoining lots; and

WHEREAS, the applicant states that side yard and parking relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject lot; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site requires side yards with widths of 5'-0" each and that the building would have a maximum exterior width of 10'-0" and constrained floor plates if side yard regulations were complied with fully; and

WHEREAS, the applicant states that the narrowness of the lot also precludes locating parking spaces within a side yard without creating a home with a severely constrained width; and

WHEREAS, accordingly, the applicant represents that the side yard and parking waivers are necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted land use maps of the surrounding area which reflects that there are only three vacant interior residential lots in the surrounding area, two of which have widths significantly larger than the subject site (with widths of 30 feet and 41 feet, respectively); and

WHEREAS, the applicant states that there is only one other vacant lot in the surrounding area with a width of only 20 feet, and that lot is occupied by a partially constructed structure that is an apparent enlargement or alteration to the adjacent home to the south; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the surrounding area is characterized by residential uses; and

WHEREAS, the applicant states that neither of the adjacent homes comply with applicable side yard regulations, as they each have minimal side yards; and

WHEREAS, the applicant submitted a parking study which shows that the number of street parking spaces available in the vicinity of the site ranges from an average of 40 at 1:00 p.m. to an average of 22 at 6:00 p.m.; and

WHEREAS, the applicant states that the availability of street parking demonstrates that the lack of parking at the proposed home will not impact the surrounding area; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, as to the Community Board's concern that the applicant's hardship was created by the purchase of the subject lot, which requires the requested variance to build a habitable home, the Board notes that ZR § 72-21(d) specifically provides that the purchase of a zoning lot subject to the restriction sought to be varied is not a self-created hardship; and

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WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a result of the lot's pre-existing narrow width; and

WHEREAS, as noted above, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home and remove the parking space from the front yard, thereby making the home more compatible with the surrounding neighborhood and removing the non-compliance related to the location of the parking space; and

WHEREAS, accordingly the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 30, 2012"-(30) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 2,184 sq. ft. (1.19 FAR); a front yard with a depth of 10'-0"; a side yard with a width of 3'-0" along the northern lot line; a side yard with a width of 3'-0" along the southern lot line; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; a total height of 31'-7"; and no parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
October 16, 2012.

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**11-12-BZ**

**CEQR #12- BSA-067K**

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application November 17, 2012 – Special Permit (§73-622) for the legalization of an enlargement to an existing single-family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 3599 Bedford Avenue, East side of Bedford Avenue, between Avenue N and Avenue O, Borough of Brooklyn, Block 7679, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 28, 2011, acting on Department of Buildings Application No. 302255020, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.
3. Proposed plans are contrary to ZR 23-461 in that the proposed side yards are less than the minimum required.
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on August 7, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 11, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

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WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue N and Avenue O, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 3,737 sq. ft. (0.93 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject home initially had a floor area of approximately 3,246 sq. ft. (0.81 FAR), and was subsequently enlarged to its current floor area of 3,737 sq. ft. (0.93 FAR), which the applicant now seeks to legalize; the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to legalize the current home's open space ratio of 56 percent (150 percent is the minimum required); and

WHEREAS, the proposed legalization will maintain the previously-existing non-complying side yards with a width of 2'-10 7/8" along the northern lot line and a width of 9'-3 5/8" along the southern lot line (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed legalization will maintain the rear yard with a depth of 21'-3 5/8" for the pre-existing portions of the home and provide a rear yard with a depth of 22'-7 5/8" for the enlarged portions of the home (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all

work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 29, 2012"-(12) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,737 sq. ft. (0.93 FAR); a maximum open space ratio of 56 percent; a side yard with a minimum width of 2'-10 7/8" along the northern lot line; a side yard with a minimum width of 9'-3 5/8" along the southern lot line; and a rear yard with a minimum depth of 21'-3 5/8", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## **23-12-BZ**

### **CEQR #12-BSA-073K**

APPLICANT – Simons & Wright LLC, for 949-951 Grand Street, LLC, owner.

SUBJECT – Application February 2, 2012 – Variance (§72-21) to allow for the development of a residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 951 Grand Street, between Morgan and Catherine Streets, Block 2924, Lot 48, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Application granted on condition.

### **THE VOTE TO GRANT –**

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### **THE RESOLUTION –**

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated January 26, 2012, acting on Department of Buildings Application No. 320413833, reads in pertinent part:

The proposed construction of a building with residential use is not permitted as-of-right in a M1-1 zoning district and is contrary to section 42-00 (use) of the Zoning Resolution and requires a variance from the Board of Standards and Appeals; and

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WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of a four-story residential building with ground floor retail use, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in the *City Record*, with continued hearings on July 17, 2012, and then to decision on October 16, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Grand Street, between Catherine Street and Morgan Avenue, within an M1-1 zoning district; and

WHEREAS, the subject premises has 25 feet of frontage along Grand Street, a depth ranging from 97'-8" to 104'-7", and a lot area of 2,530 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story mixed-use residential/commercial building with a floor area of 5,880 sq. ft. (2.32 FAR) and a total building height of 45'-0"; and

WHEREAS, the proposed building will be occupied by ground floor retail space, with seven residential units above; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant seeks a use variance to permit construction of the proposed building; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in conformance with underlying district regulations: (1) the site is a small, vacant lot; and (2) the site's history of development; and

WHEREAS, the applicant states that the subject lot is 25 feet in width and has a depth ranging from 97'-8" to 104'-7", and that the small size of the lot does not allow for floor plates of sufficient size to support a conforming manufacturing use; and

WHEREAS, as to evidence regarding the uniqueness of such site condition, the applicant submitted a 400-ft. radius diagram that reflects that the site is one of only four vacant lots out of the 52 lots within the M1-1 area; and

WHEREAS, the applicant states that the other vacant lots have greater lot areas or are owned in conjunction with adjacent lots and therefore have the potential to be merged to create a larger lot; and

WHEREAS, the applicant represents that the other vacant lots are more appropriately sized to accommodate larger floor plates needed for a conforming manufacturing or commercial use than the subject site; and

WHEREAS, the radius diagram further reflects that the subject site is situated between two lots which are occupied by existing non-conforming four-story residential buildings; and

WHEREAS, as to the history of development of the lot,

the applicant represents that the site was developed with a four-story residential building similar to the adjacent buildings until around 1982 when it was demolished; the lot has remained vacant since that time; and

WHEREAS, in support of this representation, the applicant submitted Sanborn Maps dating from 1965, 1980 and 1982; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant provided a financial analysis for (1) an as-of-right one-story retail commercial building and (2) the proposed four-story mixed use building; and

WHEREAS, the study concluded that the as-of-right scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the M1-1 zoning district consists of a mix of residential and manufacturing uses; and

WHEREAS, the radius diagram further reflects that there are R7A and R6 zoning districts located to the east of the site, and an R6B zoning district to the northwest of the site, all of which allow for residential uses; and

WHEREAS, the applicant represents that the proposed building complies with the bulk regulations for an R6 zoning district pursuant to the Quality Housing Program, to allow for a building with a floor area of 5,880 sq. ft. (2.32 FAR); the maximum permitted floor area for an R6 (Quality Housing) building would be 7,590 sq. ft. (3.0 FAR); and

WHEREAS, further, as to other bulk regulations, the proposed building is four stories and 45'-0" in height and complies with the R6 Quality Housing height and setback regulations and provides a complying rear yard at 36'-0"; and

WHEREAS, while the closest residential district is an R6B zoning district, the applicant states that R7A and R6 zoning districts which allow for 4.0 and 3.0 FAR respectively, are more appropriate zones to compare the subject site, which is located on a wide street, rather than the R6B zoning district which only allows 2.0 FAR and is mapped on narrow streets; and

WHEREAS, the applicant further states that the adjacent lots to the north and south of the subject site are both occupied by four-story residential buildings; and

WHEREAS, the applicant submitted a streetscape reflecting that the street wall height of the proposed building



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will match the two adjacent buildings, thereby filling in a gap in the current street front along Grand Street; and

WHEREAS, the applicant notes that the site's history supports the residential use of the site, as it was developed residentially until 1982 and has remained vacant since; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 12BSA073K, dated October 12, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the September 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the proposed construction of a four-story mixed-use residential/commercial building, contrary to ZR § 42-00; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 2, 2012"- eleven (11) sheets; and on further condition:

THAT the bulk parameters of the proposed building shall be as follows: a maximum floor area of 5,880 sq. ft. (2.32 FAR); and a total height of 45'-0", as illustrated on the BSA-approved plans;

THAT DOB shall not issue a Certificate of Occupancy until the applicant has provided it with documentation of DEP's approval of the Remedial Closure Report;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT all interior layouts and exits shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2012.

## 80-12-BZ CEQR #12-BSA-111M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; SoulCycle East 63<sup>rd</sup> Street, LLC, lessee.

SUBJECT – Application April 5, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*SoulCycle*). C1-8X and R8B zoning districts. PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2012, acting on Department of Buildings Application No. 120952950, reads in pertinent

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part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C1-8X zoning district and partially within an R8B zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor of a 22-story mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends disapproval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the application (the "Opposition"), citing concerns about the potential impact the use would have on the character of the neighborhood, specifically whether an entrance to the PCE on East 63<sup>rd</sup> Street and the associated visitor traffic would be compatible with adjacent residential uses; and

WHEREAS, the Opposition's supplemental concerns include: (1) evening hours of operation; (2) noise; (3) preservation of the façade and windows; (4) the installation of signage; and (5) excessive lighting; and

WHEREAS, the subject site is located on the southeast corner of East 63<sup>rd</sup> Street and Lexington Avenue, partially within a C1-8X zoning district and partially within an R8B zoning district; and

WHEREAS, the applicant notes that pursuant to ZR § 77-11, since more than 50 percent of the lot area of the site is located within the C1-8X zoning district, and since the greatest distance from the district boundary to any lot line within the R8B zoning district does not exceed 25 feet, the C1-8X use and bulk regulations, including the special permit provisions of ZR § 73-36, may apply to the entire zoning lot; and

WHEREAS, the site is occupied by a 22-story mixed-use residential/commercial building known as the historic Barbizon Hotel, an individual landmark designated by the Landmarks Preservation Commission in 2012; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (LPC), dated May 11, 2012, approving the proposed signage and other modifications under its jurisdiction; and

WHEREAS, the site is occupied by another PCE, which the Board approved pursuant to BSA Cal. No. 107-06-BZ and is operated as Equinox Fitness, with an entrance

on Lexington Avenue; and

WHEREAS, the proposed PCE will occupy 3,270 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, as to the appropriateness of the use on East 63<sup>rd</sup> Street, the Opposition cited to the report associated with the City Planning Commission's (CPC) 2006 text amendment to allow PCEs in C1-8X zoning districts; specifically, the Opposition finds that because the report states that the CPC found it appropriate to allow PCEs along the commercially-zoned avenues of the Upper East Side, such use is not deemed to be appropriate on the side streets; and

WHEREAS, the Opposition notes that the C1-8X zoning district (1) only extends 100 feet from Lexington Avenue onto East 63<sup>rd</sup> Street and (2) does not encompass the entire portion of the building to be occupied by the PCE; thus the Opposition finds the proposed PCE location to conflict with the spirit of the text change; and

WHEREAS, the Opposition also cited to the Board's resolution associated with the Equinox at the site, which reflects that the PCE entrance would be at Lexington Avenue, separate from the residential entrance; and

WHEREAS, in response to the Opposition, the applicant stated that CPC did not note any limitation to the location of PCE's permitted within C1-8X zoning districts; and

WHEREAS, the Board agrees with the applicant that CPC did not draft any locational limitations into the text amendment and that PCEs are permitted anywhere within the C1-8X district; and

WHEREAS, further, the Board notes that because the C1-8X zoning district extends east along East 63<sup>rd</sup> Street, any use, including other kinds of commercial uses, permitted by C1-8X zoning district regulations would be permitted within the subject East 63<sup>rd</sup> Street portion of the building; and

WHEREAS, the Board does not find the language in the Equinox resolution about the entrance being on Lexington Avenue to be a required condition or to have any relationship to the text change; and

WHEREAS, as to relocating the entrance to Lexington Avenue, the Board directed the applicant to analyze such a scheme and the applicant responded that it could not redesign the entrance without disturbing the residential lobby and/or the existing PCE since there is no common membership between the two PCEs; the relocation of the entrance would also require moving the exercise equipment to a space that would be visible from East 63<sup>rd</sup> Street, which the Opposition disfavors; and

WHEREAS, the Board accepts the applicant's explanation as to the considerable difficulties associated with relocating the entrance of the proposed PCE to

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# MINUTES

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Lexington Avenue; and

WHEREAS, the Opposition recommended that the Board impose certain operational conditions if it approved the proposal; those conditions include: (1) limiting the number of bicycles; (2) limiting the hours of operation in the evening to no later than 8:00 p.m.; (3) requiring sufficient soundproofing so that music cannot be heard outside the building or within nearby residences; (4) limiting any change to the façade or windows; and (5) prohibiting signage on East 63<sup>rd</sup> Street; and

WHEREAS, the Board directed the applicant to: (1) reduce the number of bicycles; (2) limit the hours of operation in light of the acceptable hours of operation at other SoulCycle locations; (3) install and maintain sufficient sound-proofing; and (4) comply with LPC's determination on exterior conditions; and

WHEREAS, the applicant initially proposed to remain open until 11:00 p.m.; however, in response to the Opposition's concerns, the applicant states that the hours of operation for the proposed PCE will be: Monday through Saturday, from 5:30 a.m. to 9:30 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, as to the Opposition's supplementary concerns, the Board notes that (1) the applicant has agreed to limit the number of bicycles to 60; (2) the applicant agrees to install and maintain soundproofing as reflected on the Board-approved plans; and (3) the applicant has obtained approval from LPC for the exterior conditions; and

WHEREAS, the Board notes that the applicant has also agreed to dedicate a portion of its interior space to allow for queuing and waiting inside the building rather than on the street; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.12 and 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement, CEQR No.12BSA111M, dated April 3, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located partially within a C1-8X zoning district and partially within an R8B zoning district, the operation of a physical culture establishment on a portion of the first floor of a 22-story mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 5, 2012" - Two (2) sheets and "Received August 22, 2012" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on October 16, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the maximum number of bicycles in the facility will be limited to 60;

THAT the hours of operation will be limited to Monday through Saturday, from 5:30 a.m. to 9:30 p.m., and Sunday, from 7:00 a.m. to 9:00 p.m.;

THAT soundproofing will be installed and maintained as reflected on the BSA-approved plans;

THAT all modifications to signage and the façade will be in accordance with the Landmarks Preservation Commission's Certificate of No Effect, dated May 11, 2012;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

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THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 16, 2012.

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## 42-10-BZ

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116’ west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012 at 1:30 P.M., for adjourned hearing.

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## 5-11-BZ

APPLICANT – Akerman Senterfitt, LLP, for Dumbo Development, LLC, owner.

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a new five-story residential development, contrary to use regulations (§42-00). M2-1 zoning district. PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for decision, hearing closed.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105’ west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for adjourned hearing.

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## 93-11-BZ

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district.

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for deferred decision.

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## 156-11-BZ

APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon’s Church owners.

SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon’s Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-2), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district. PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165<sup>th</sup> Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.

### COMMUNITY BOARD #4BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 157-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1968 2<sup>nd</sup> Avenue Realty LLC., owner.

SUBJECT – Application October 5, 2011– Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.

PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101<sup>st</sup> Street, Block 1673, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #11M

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for adjourned hearing.

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## 160-11-BZ

APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.

SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (*Jewish National Fund*), contrary to rear yard (§24-33), rear yard setback (§24-552), lot coverage (§24-11), and height and setback (§§23-633, 24-591) regulations. R8B/LH-1A zoning district.

PREMISES AFFECTED – 42 East 69<sup>th</sup> Street, south side of East 69<sup>th</sup> Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.

### COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 7-12-BZ

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

### COMMUNITY BOARD #4BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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## 45-12-BZ

APPLICANT – Moshe M. Friedman, P.E., for Bais Sina, owner.

SUBJECT – Application February 27, 2012 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a UG 4 synagogue (*Bais Sina*), contrary to floor area ratio and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), rear yard (§24-36), court and minimum distance between walls or windows and lot lines (§24-60) regulations. R5 zoning district.

PREMISES AFFECTED – 1914 50<sup>th</sup> Street, 100’ east from the corner formed by 19<sup>th</sup> Avenue and south of 50<sup>th</sup> Street, Block 5462, Lot 12, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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# MINUTES

## 71-12-BZ

APPLICANT – Akerman Senterfitt, LLP, for Archer Avenue Partners, LLC, owner; Neighborhood Housing Services of Jamaica, Inc., lessee.

SUBJECT – Application March 23, 2012 – Variance (§72-21) to allow for a new 14-story residential building with ground floor retail, contrary to floor area (§§115-211/23-942), height and setback (§115-233), and accessory off street parking (§115-51). C6-2/Downtown Jamaica Special Zoning District.

PREMISES AFFECTED – 165-10 Archer Avenue, southeast corner of 165<sup>th</sup> Street and Archer Avenue, Block 10155, Lot 105, Borough of Queens.

### COMMUNITY BOARD #12Q

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for decision, hearing closed.

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## 74-12-BZ

APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.

SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 252 Exeter Street, west side 350' north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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## 76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #15K

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 115-12-BZ

APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.

SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.

PREMISES AFFECTED – 701/745 64<sup>th</sup> Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for continued hearing.

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## 141-12-BZ

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc., owner.

SUBJECT – Application May 3, 2012 – Re-Instatement (§§11-411 & 11-412) of a previously approved variance which permitted retail (UG 6) in a residential district which expired on October 14, 1989; amendment to permit the installation of awnings/signage, and changes to the interior layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164<sup>th</sup> Street, southwest corner of 65<sup>th</sup> Street, Block 6762, Lot 53, Borough of Queens.

### COMMUNITY BOARD #8Q

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 195-12-BZ

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two story office building (UG6) with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to

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# MINUTES

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November 27, 2012, at 1:30 P.M. for postponed hearing.  
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## 198-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.

SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the conversion and enlargement of existing buildings to contain UG 6 retail and UG 2 residential uses, contrary to floor area, lot coverage (§23-145), rear yard (§23-47), rear yard setback (§23-633(b), height (§§23-691, 99-054(b)), streetwall (§23-692(c), 99-051(a)), inner court (§23-851), window-to-lot-line (§23-861), and commercial use (§32-422) regulations. C5-1(MP), R8B zoning district. PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Block 1389, Lot 25, Borough of Manhattan.

### COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 23, 2012, at 1:30 P.M., for decision, hearing closed.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## SPECIAL HEARING WEDNESDAY MORNING, OCTOBER 17, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.  
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### APPEALS CALENDAR

#### 117-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 and R-4 Zoning District.

PREMISES AFFECTED – Van Wyck Expressway & Atlantic Avenue, Block 9989, Lot 70. Borough of Queens.

#### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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#### 118-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5B/R4-1/R7X/C2 Zoning District.

PREMISES AFFECTED – BQE & Queens Boulevard, Borough of Queens.

#### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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#### 119-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 Zoning District.

PREMISES AFFECTED – BQE & 31<sup>st</sup> Street, Block 1137, Lot 22. Borough of Queens.

#### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December

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# MINUTES

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11, 2012, at 10 A.M., for continued hearing.  
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## 120-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 Zoning District.

PREMISES AFFECTED – BQE & 31<sup>st</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 121-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 zoning district.

PREMISES AFFECTED – BQE & 32<sup>nd</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 122-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 zoning district.

PREMISES AFFECTED – BQE & 32<sup>nd</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 123-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals

challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5, M1-1 zoning district.

PREMISES AFFECTED – BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 124-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R5, M1-1 zoning district.

PREMISES AFFECTED – BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1. Borough of Queens

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 125-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-2, M3-1 zoning district.

PREMISES AFFECTED – Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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## 126-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1 zoning district.

PREMISES AFFECTED – Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.  
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# MINUTES

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## 127-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 zoning district.

PREMISES AFFECTED – Northern Boulevard and BQE, Block 1163, Lot 1. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 128-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C2-3, R7X, R5B zoning district.

PREMISES AFFECTED – Queens Boulevard and BQE, Block 1343, Lot 129 & 139, Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 129-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 zoning district.

PREMISES AFFECTED – Queens Boulevard and 74<sup>th</sup> Street, Block 2448, Lot 213. Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 130-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1 zoning district.

PREMISES AFFECTED – Skillman Avenue, b/t 28<sup>th</sup> and 29<sup>th</sup> Street, Block 72, Lot 250. Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 131-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 (WP) zoning district.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 132-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C4-4 (WP) zoning district.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 133-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3A, R4, R7A zoning district.

PREMISES AFFECTED – Woodhaven Boulevard N/O Elliot Avenue, Block 3101, Lot 9. Borough of Queens.

### COMMUNITY BOARD #6Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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# MINUTES

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## 134-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1, M1-1, R4 zoning district.

PREMISES AFFECTED – Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4. Borough of Queens.

### COMMUNITY BOARD #5Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 135-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M3-1, M1-1, R4 zoning district.

PREMISES AFFECTED – Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4. Borough of Queens.

### COMMUNITY BOARD #5Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 171-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1 zoning district.

PREMISES AFFECTED – Cross Bronx Expressway E/O Sheridan Expressway. Borough of Bronx.

### COMMUNITY BOARD #9BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 172-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C8-1 zoning district.

PREMISES AFFECTED – Cross Bronx Expressway & Bronx River, Block 3904, Lot 1. Borough of Bronx.

### COMMUNITY BOARD #6BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 173-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. C8-1 zoning district.

PREMISES AFFECTED – Cross Bronx Expressway E/O Bronx River & Sheridan Expressway, Block 3904, Lot 1. Borough of Bronx.

### COMMUNITY BOARD #6BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 174-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R3-2 zoning district.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 175-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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# MINUTES

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## 176-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 (HP) zoning district.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 177-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 (HP) zoning district.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 178-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 zoning district.

PREMISES AFFECTED – Bruckner Expressway N/O 156<sup>th</sup> Street, Block 2730, Lot 101. Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 179-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-2 (HP SD) zoning district.

PREMISES AFFECTED – Bruckner Expressway N/O 156<sup>th</sup> Street, Block 2730, Lot 101. Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 180-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway S/O Van Cortland, Block 3269, Lot 70. Borough of Bronx.

### COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ross Markowitz.

For Opposition: Mark Davis, Department of Buildings.

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 273-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1, M1-1 zoning district.

PREMISES AFFECTED – Major Deegan @ 167<sup>th</sup> Street, 2539, Lot 502. Borough of Bronx.

### COMMUNITY BOARD #4BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 274-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail's Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building's determination that signs located on railroad properties are subject to New York City signage regulation. R7-1, M1-1 zoning district.

PREMISES AFFECTED – Major Deegan @ 167<sup>th</sup> Street, Block 2539, Lot 502. Borough of Bronx.

### COMMUNITY BOARD #4BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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# MINUTES

## 182-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC, lessee.

OWNER OF PREMISES – Metropolitan Transportation Authority.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway and 161<sup>st</sup> Street. Borough of Bronx.

### COMMUNITY BOARD #4BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 183-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – 476 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 184-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – 477 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 185-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – 475 Exterior Street, E. 149<sup>th</sup>

Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 186-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 187-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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## 188-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that six signs located on railroad properties are subject to the NYC Zoning Resolution. M1-1 zoning district.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on September 25, 2012, under Calendar No. 149-05-A and printed in Volume 97, Bulletin Nos. 39-40, is hereby corrected to read as follows:

### 149-05-A

APPLICANT – Eric Palatnik, P.C., for Gregory Broutzas, owner.

SUBJECT – Application May 10, 2012 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application which expired on May 12, 2007. R2A Zoning District.

PREMISES AFFECTED – 32-29 211<sup>th</sup> Street, east of the corner of 32<sup>nd</sup> Street and 211<sup>th</sup> Street, Block 6061, Lot 10, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of the enlargement of a single-family home under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 24, 2012, after due notice by publication in the *City Record*, with a continued hearing on August 21, 2012, and then to decision on September 25, 2012; and

WHEREAS, the site was inspected by Commissioner Montanez; and

WHEREAS, the site is located on the east side of 211<sup>th</sup> Street, between 32<sup>nd</sup> Avenue and 33<sup>rd</sup> Avenue, and has a total lot area of 4,500 sq. ft.; and

WHEREAS, the owner proposes to enlarge the existing single-family home at the site; and

WHEREAS, the subject site was formerly within an R2 zoning district; and

WHEREAS, the proposed enlargement complies with the former zoning district parameters; and

WHEREAS, however, on April 12, 2005 (hereinafter, the “Rezoning Date”), the City Council approved the rezoning proposal which rezoned the site to an R2A zoning district; and

WHEREAS, the building does not comply with the R2A district parameters; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law

doctrine of vested rights; and

WHEREAS, on November 1, 2005, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant six months to complete construction, which expired on May 1, 2006; and

WHEREAS, subsequently, on May 16, 2006, the Board granted a one-year extension of time to complete construction and obtain a certificate of occupancy, which expired on May 16, 2007; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the building was not completed by the stipulated date due to financing delays; and

WHEREAS, however, the applicant submitted an affidavit from the owner stating that subsequent to the May 16, 2006 extension of time to complete construction, all exterior brick work, steps, air conditioning, plumbing, and light fixtures have been installed; and

WHEREAS, the affidavit from the owner states that the boiler has also been installed, and the only remaining work is to have the gas meter installed and to obtain the necessary sign-offs from DOB; and

WHEREAS, the applicant represents that it will take approximately one year to complete the work at the site, obtain the necessary sign-offs from DOB, and obtain a certificate of occupancy; and

WHEREAS, the Board has reviewed the evidence and determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a one-year extension of time to complete construction; and

*Therefore it is Resolved* that this application to renew DOB Permit No. 401867618, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one year from the date of this resolution, to expire on September 25, 2013.

Adopted by the Board of Standards and Appeals, September 25, 2012.

**\*The resolution has been revised to correct the Premises Affected No. which read: ...32-09 211<sup>th</sup> Street... now reads: ...32-29 211<sup>th</sup> Street.... Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on August 14, 2012, under Calendar No. 294-06-BZ and printed in Volume 97, Bulletin No. 34, is hereby corrected to read as follows:

### 294-06-BZ

APPLICANT – Goldman Harris LLC, owner; Club Fitness NY, lessee.

SUBJECT – Application February 8, 2012 – Amendment of a previously approved special permit (§73-36) which permitted the operation of a physical culture establishment (*Club Fitness*) on the second and third floors in a three-story building. C2-2 zoning district.

PREMISES AFFECTED – 31-11 Broadway, between 31<sup>st</sup> and 32<sup>nd</sup> Streets, Block 613, Lots 1 & 4, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nadia Alexis.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance for a physical culture establishment (“PCE”), to permit a correction to the calculation of the floor area and to permit a 4,700 sq. ft. enlargement of the cellar; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2012, and then to decision on August 14, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the site is located on the north side of Broadway, between 31<sup>st</sup> Street and 32<sup>nd</sup> Street, partially within a C4-2A zoning district and partially within a C4-3 zoning district; and

WHEREAS, the site is occupied by a three-story and cellar commercial building; and

WHEREAS, the PCE occupies a total of 28,434 sq. ft. of floor area on the first, second, and third floors; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1921 when, under BSA Cal. No. 628-21-BZ, the Board granted a variance to permit the construction of a movie theater in what was formerly a residential district; the theater has since been demolished; and

WHEREAS, on October 17, 1967, under BSA Cal.

No. 97-67-BZ, the Board granted a variance to permit the use of the cellar to include an eating and drinking establishment with cabaret; this establishment is still operating at the site; and

WHEREAS, most recently, on April 10, 2007, the Board granted a special permit for the establishment of a PCE at portions of the cellar level and first floor, and the entire second and third floors; and

WHEREAS, the applicant states that the prior approval showed the PCE as occupying 27,271 sq. ft. of floor area, however, the plans have since been corrected to include an additional 1,163 sq. ft. of floor area which had been unintentionally omitted; and

WHEREAS, the applicant now seeks an amendment to permit an expansion of the PCE to include an additional 4,700 sq. ft. of floor space at the cellar level; and

WHEREAS, at hearing, the Board questioned whether the proposed signage was in compliance with the C4 district signage regulations; and

WHEREAS, in response, the applicant submitted a revised signage analysis reflecting that the signage at the site complies with the underlying district signage regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the grant is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 10, 2007, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received February 8, 2012”-(6) sheets and “Received May 18, 2012”-(1) sheet; and *on further condition*:

THAT signage on the site will comply with C4 district regulations;

THAT there will be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402278600)

Adopted by the Board of Standards and Appeals, August 14, 2012.

**\*The resolution has been revised to correct the Plans date, which read: ...'February 8, 2012'-(4) sheets. now reads: ...'February 8, 2012'-(6) sheets. Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on November 22, 2011, under Calendar No. 2-11-BZ and printed in Volume 96, Bulletin No. 48, is hereby corrected to read as follows:

### 2-11-BZ

#### CEQR #11-BSA-049M

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10<sup>th</sup> Street, Block 610, Lot 16, Borough of Manhattan.

#### COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Anthony Bartolacci.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 6, 2010, acting on Department of Buildings Application No. 110408513, reads in pertinent part:

ZR 23-632: Proposed front setback does not comply.

ZR 23-142: Proposed open space ratio does not comply; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C4-5 zoning district within the Greenwich Village Historic District, a residential/community facility enlargement to an existing commercial building, which does not comply with front setback and open space ratio requirements, contrary to ZR §§ 23-632 and 23-142; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in the *City Record*, with continued hearings on August 23, 2011 and November 1, 2011, and then to decision on November 22, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Seventh Avenue South and West 10<sup>th</sup> Street; and

WHEREAS, the site has a triangular shape with 135 feet

of frontage along Seventh Avenue and 16 feet of frontage along West 10<sup>th</sup> Street, with a lot area of approximately 5,786 sq. ft.; and

WHEREAS, the site is occupied by three-story commercial building, which was constructed in the early 1990s in accordance with Landmarks Preservation Commissions’ (LPC) approvals; and

WHEREAS, a portion of the building is occupied by a PCE, pursuant to the Board’s approval associated with BSA Cal. No. 1-95-BZ and the remainder is occupied by a grocery store; and

WHEREAS, the building has a floor area of approximately 17,505 sq. ft. (3.02 FAR), a streetwall and total height of 52’-4”, and no open space; and

WHEREAS, the applicant now proposes to add a fourth, fifth, and partial sixth floor to be occupied by a residential and community facility space on the fourth floor and residential use on the two upper floors; and

WHEREAS, the applicant proposes the following non-complying conditions: (1) a streetwall with a height of 74’-4” (a 15-ft. setback is required at a height of 60 feet); and no open space (the minimum open space ratio is 48 percent); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site’s irregular shape and (2) the constraints of the existing building; and

WHEREAS, the applicant states that the site’s shape approximates that of a right triangle with a notch carved out of the 90 degree angle at the rear with six distinct zoning lot lines; and

WHEREAS, the applicant states that the required setback from Seventh Avenue South shifts the building’s bulk away from the long end of the triangle into the right angle where the two sides of a triangle would come together; and

WHEREAS, the applicant states that the site’s irregular shape, including the notch in the rear presents practical difficulties in complying with the relevant zoning regulations; and

WHEREAS, the applicant notes that if the site were a perfect triangle, without the notch, a residential enlargement could be designed with internal circulation at the rear of the site, allowing for a more efficient floor; and

WHEREAS, the applicant represents that a design with the required 15-ft. initial setback would result in residential units with depths limited to 20 feet; and

WHEREAS, the applicant represents that the difference in leasable floor area attributed to the irregular shape would be from 3,829 sq. ft. of leasable residential floor area (subtracting community facility floor area and circulation space) to 2,025 sq. ft. of leasable space, with the setback; and

WHEREAS, the applicant states that the notch at the back of the building limits the potential uses for that area to non-residential or non-habitable accessory residential uses as it is bound by two lot lines and lacks the requisite access

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# MINUTES

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to light and air; and

WHEREAS, the applicant states that a regularly-shaped site would have less exterior perimeter, eliminate unnecessary circulation space, and provide more and better usable, residential floor area; and

WHEREAS, the applicant provided evidence to support a claim that the inclusion of a setback would also require increased structural engineering costs such as a transfer platform above the existing roof to support the new floor 15 feet back from the streetwall; and

WHEREAS, the applicant represents that the site's shape is a unique condition; and

WHEREAS, specifically, the applicant states that when the Westside IRT (2/3 subway) was built in 1917, Seventh Avenue was extended south through the Greenwich Village street grid, leaving irregularly-shaped lots along Seventh Avenue South; and

WHEREAS, the applicant asserts that it is unique from other seemingly similar sites in that (1) many others include contributing buildings in the historic district and thus are eligible for relief from the City Planning Commission pursuant to ZR § 74-711, which the subject noncontributing building is not; (2) few of the other nearby buildings on similarly shaped sites can structurally sustain enlargements; or (3) others are too small to accommodate residential additions, which are only permitted on zoning lots with a total lot area greater than 1,700 sq. ft.; and

WHEREAS, the applicant provided an analysis of all zoning lots bisected by the extension of Seventh Avenue South, which reflects that there are 32 bisected lots out of a much greater number of lots in the study area and only eight (25 percent) of the bisected sites are similar to the subject site with a basically triangular shape, underdeveloped, and non-contributing in the historic district; and

WHEREAS, the applicant cites to Douglaston v. Klein, 51 N.Y.2d 963 (1960) for the principle that a uniqueness finding "does not require that only the parcel of land in question and none other be affected by the condition which creates the hardship" but that the hardship condition not be so generally applicable such that the a series of potential variances be tantamount to a zoning change; and

WHEREAS, the Board agrees that Douglaston does not require that in order to satisfy the uniqueness finding that a site must be the only one with a particular set of conditions leading to hardship; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) the complying mixed-use building with a floor area of 26,388 sq. ft.; and (2) the proposed mixed-use building with floor area of approximately 34,287 sq. ft.; and

WHEREAS, the study concluded that the complying scenario would not result in a reasonable return, but that the proposed enlargement would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed use is conforming and is consistent with the surrounding area and that the existing building with a height of 52'-4" is a full lot coverage building; although 1,041 sq. ft. of open space is required on the first residentially occupied floor, the creation of open space as part of the enlargement above the third floor would not benefit the surrounding area; and

WHEREAS, the applicant asserts that there is a range of building sizes and types in the surrounding area such that there is not a defined building form or profile, thus the absence of the setback and the sky exposure plane encroachment will not be out of character; and

WHEREAS, the applicant notes that the proposed FAR of 5.93 is less than the maximum 6.5 permitted and thus, the bulk is contemplated by zoning district regulations; and

WHEREAS, lastly, because the site is within the Greenwich Village Historic District, the applicant obtained approval of the design from the LPC in the form or a Certificate of Appropriateness, dated June 8, 2010 and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship is a result of the historic street mapping and was not self-created; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board notes that the proposal requires waivers for setback and for open space, and that all other zoning conditions are complying; and

WHEREAS, the Board notes that the proposal reflects a setback with a depth between 18 and 20 feet above the fifth floor height of 74'-4"; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the applicant to enlarge the existing building to accommodate the available floor area; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; and



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WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA049M, dated November 12, 2010; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, within a C4-5 zoning district within the Greenwich Village Historic District, a residential/community facility enlargement to an existing commercial building, which does not comply with front setback and open space ratio requirements, contrary to ZR §§ 23-632 and 23-142, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 18, 2011"- fourteen (14) sheets; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 34,287 sq. ft. (5.93 FAR) and the front wall height shall not exceed 74'-4", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 22, 2011.

**\*The resolution has been revised to correct the sq. ft. in the 30<sup>th</sup> WHEREAS, the FAR in the 36<sup>th</sup> WHEREAS and the sq. and FAR in the 1<sup>st</sup> Condition. Corrected in Bulletin Nos. 41-43, Vol. 97, dated October 25, 2012.**

# MINUTES

## \*CORRECTION

This resolution adopted on May 1, 2012, under Calendar No. 195-11-BZ and printed in Volume 97, Bulletin No. 19, is hereby corrected to read as follows:

### 195-11-BZ

#### CEQR #12-BSA-059K

APPLICANT – Law Office of Fredrick A. Becker, for Harriet Mandalaoui and David Mandalaoui, owners.

SUBJECT – Application December 22, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(b)); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2070 East 21<sup>st</sup> Street, west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, Block 7299, Lot 39, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

#### APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 7, 2011, acting on Department of Buildings Application No. 320310230, reads in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b)
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage, which are contrary to ZR Section 23-141(b)
3. Proposed enlargement increases the degree of non-compliance of an existing building with respect to a side yard less than 5'-0", which is contrary to ZR Section 23-461(a) & 23-48;
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on March 6, 2012 after due notice by publication

in *The City Record*, with a continued hearing on April 3, 2012, and then to decision on May 1, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 21<sup>st</sup> Street, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,505 sq. ft. (0.60 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,505 sq. ft. (0.60 FAR) to 2,625 sq. ft. (1.05 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 44.5 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 55.5 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 2'-6 1/2" (a minimum width of 5'-0" is required for each side yard) and to provide a side yard with a width of 5'-5 1/2" along the southern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a study of FARs in the area which reflects that there are at least two homes within two blocks of the site in the subject R3-2 zoning district with FARs in excess of 1.0, and concludes that the proposed FAR is compatible with the neighborhood character; and

WHEREAS, at hearing, the Board directed the applicant to confirm that the proposed bay windows on the south side of the home would provide sufficient clearance for automobiles driving to and from the parking space at the rear of the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that there will be at least six feet of clearance below each of the bay windows on the south side of the proposed home, which the applicant represents is sufficient clearance for passing automobiles; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor

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# MINUTES

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impair the future use and development of the surrounding area; and

October 25, 2012.

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 20, 2012"-(10) sheets and "April 16, 2012"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,625 sq. ft. (1.05 FAR); an open space of 44.5 percent; lot coverage of 55.5 percent; a side yard with a minimum width of 2'-6 1/2" along the northern lot line; a side yard with a minimum width of 5'-5 1/2" along the southern lot line; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 1, 2012.

**\*The resolution has been revised to correct the CEQR No. which read: ...12-BSA-055K... now reads: ...12-BSA-059K... Corrected in Bulletin Nos. 41-43, Vol. 97, dated**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, No. 44

October 31, 2012

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New Case Filed Up to October 23, 2012  
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**297-12-A**

28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street., Block 596, Lot(s) 45, Borough of **Queens, Community Board: 1**. An application filed seeking a determination that the owner of the premises has acquired a common law vested right to complete construction commenced under the prior R6 zoning district. R6-A ( C1-1) ZD R6-A(C1-1) district.

-----

**298-12-BZ**

726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street, and East 4th Street., Block 545, Lot(s) 15, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university uses. M1-5B zoning district. M1-5B district.

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**299-12-BZ**

40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot(s) 1, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to waive the required FAR, height and setback, and rear yard requirements to facilitate the construction of a twelve-story office building with the first and second stories devoted to retail uses. M1-5 district.

-----

**300-12-BZ**

36 West 93rd Street, between Central Park West and Columbus Avenue, Block 1206, Lot(s) 20, Borough of **Manhattan, Community Board: 7**. Variance (72-21) to permit an enlargement of an existing school building contrary to lot coverage, permitted obstruction in rear yard equivalent, rear yard equivalent, and sky exposure plane. R7-2 district.

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**301-12-BZ**

213-11/19 35th Avenue, northwest corner of 35th Avenue and Bell Boulevard, Block 6112, Lot(s) 47, Borough of **Queens, Community Board: 11**. Special permit (73-36) to allow for a 25 foot extension of an existing commercial use into a residential zoning district, and to allow the enlargement of a legal non-complying building. C2-2(R4)and R2A district.

-----

**302-12-BZ**

32 West 18th Street, West 18th Street between Fifth and Sixth Avenues., Block 819, Lot(s) 1401, Borough of **Manhattan, Community Board: 5**. Special permit (73-36) to permit a proposed physical culture establishment to be located at the ground floor of the building at the premises. C6-4A district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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NOVEMBER 20, 2012, 10:00 A.M.

APPEALS CALENDAR

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 20, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**SPECIAL ORDER CALENDAR**

**1005-66-BZ**

APPLICANT – Moshe M. Friedman, P.E. for Chelsea Town LLC c/o Hoffman Management, owner.

SUBJECT – Application September 4, 2012 – Extension of Term of a variance previously granted pursuant to Section 60(1b) of the Multiple Dwelling Law which permitted transient parking of unused and surplus tenant spaces, limited to twenty-two (22) cars, within the accessory garage which expired on May 2, 2012; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 320 West 30<sup>th</sup> Street, south side of West 30<sup>th</sup> Street, 202' west of 8<sup>th</sup> Avenue. Block 753, Lot 51, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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**982-83-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to Obtain a Certificate of Occupancy of a previously granted Variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192<sup>nd</sup> Street, Block 5513, Lot 27, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**85-91-BZ**

APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.

SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously approved variance for the operation of a veterinarian's office and accessory dog kennels with a caretaker's apartment on the subject premises which expired on July 21, 2012 and to amend the resolution so as to permit a change to the hours of operation and accessory signage. R3-1 zoning district.

PREMISES AFFECTED – 204-18 46<sup>th</sup> Avenue, south side of 46<sup>th</sup> Avenue 142.91' east of 204<sup>th</sup> Street. Block 7304, Lot 17, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**102-12-A**

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Michael Mason, lessee.

SUBJECT – Application April 12, 2012 – Proposed reconstruction and enlargement of a single family home not fronting on a mapped street contrary to General City law Section 36 and the proposed upgrade of the private disposal system is contrary to the DOB policy. R4 Zoning district.

PREMISES AFFECTED – 489 Sea Breeze Walk, east side of Sea Breeze Walk, north of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**140-12-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Foster Road Development LLC, owner.

SUBJECT – Application April 30, 2012 – Appeal from decision of Borough Commissioner denying permission for proposed construction of a two family dwelling partially within the bed of a mapped street. R3A zoning district.

PREMISES AFFECTED – 69 Parkwood Avenue, east side of Parkwood Avenue, 200'south of intersection of Parkwood and Uncas Avenues. Block 6896, Lot 120(tent), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**142-12-A**

APPLICANT – Sheldon Lobel, P.C., for 108-59 Ditmas Boulevard, owner.

SUBJECT – Application May 3, 2012 – Amendment of a previously approved waiver of Section 35 of the General City Law ("GCL") which permitted the construction of a two family dwelling in the bed of a mapped street. The amendment seeks to construct a community facility within the bed of 24<sup>th</sup> Avenue, the mapped street. R3-2 Zoning District.

PREMISES AFFECTED – 24-02 89<sup>th</sup> Street, between Astoria Boulevard and 23<sup>rd</sup> Avenue, Block 1100, Lot 101, Borough of Queens.

**COMMUNITY BOARD #3Q**

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**247-12-A**

APPLICANT – Deidre Duffy, P.E. for Breezy Point Cooperative, Inc., owner; Timothy and Barbara Johnson, lessee.

SUBJECT – Application August 10, 2012 – Proposed construction of a single family home that does not front on a legally mapped street, contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 659 Highland Place, east side of Highland Place, 222.5' north of 12<sup>th</sup> Avenue. Block 16350, Lot 300. Borough of Queens.

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# CALENDAR

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## COMMUNITY BOARD #14Q

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### 248-12-A

APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Gerard McGlynn, lessee.

SUBJECT – Application August 10, 2012 – Proposed building is not fronting a mapped street, contrary to § 36 General City Law and in the bed of a mapped street, contrary to Art. §35 of the General City Law. Private disposal system in the bed of a mapped street contrary to Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 45 Tioga Walk, east side of Tioga Walk, 68' south of West End Avenue. Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

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**NOVEMBER 20, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, November 20, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## ZONING CALENDAR

### 159-12-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.

SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building contrary to rear yard requirements, ZR §24-36. R3-2 zoning district.

PREMISES AFFECTED – 94-07 156<sup>th</sup> Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, Borough of Queens.

## COMMUNITY BOARD #10Q

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### 210-12-BZ

APPLICANT – Herrick, Feinstein LLP, for 44 West 28<sup>th</sup> Street Penn Plaza Properties, LLC, owner; CrossFit NYC, lessee.

SUBJECT – Application July 23, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) to be located on second story of existing 16-story building. C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 44 West 28<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 829, Lot 68, Borough of Manhattan.

## COMMUNITY BOARD #5M

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### 233-12-BZ

APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.

SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential zone, contrary to §22-00. R3X zoning district.

PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139<sup>th</sup> Avenue, 246<sup>th</sup> Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.

## COMMUNITY BOARD #13Q

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### 235-12-BZ

APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.

SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to permit a one-story building to be used as four(4) Use Group 6 eating and drinking establishments, contrary to use regulations. C3 zoning district.

PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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### 249-12-BZ

APPLICANT – Lewis E. Garfinkel, for Solomon Friedman, owner.

SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to ZR §23-141(a) for floor area and open space; ZR §23-461(a) for side yards and ZR §23-47 less than the required rear yard. R-2 zoning district.

PREMISES AFFECTED – 1320 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, 140' south of Avenue M, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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*Jeff Mulligan, Executive Director*



# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 23, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**724-56-BZ**

APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.

SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of an approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42<sup>nd</sup> Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.

**COMMUNITY BOARD #11Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for decision, hearing closed.

**5-96-BZ**

APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.

SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of an approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' west of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

**173-99-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.

SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011; Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.

PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43<sup>rd</sup> Avenue, Block 782, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for adjourned hearing.

**96-00-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 4 East 77<sup>th</sup> Street Company, owner.

SUBJECT – Application July 23, 2012 – Extension of Term (§11-411) of an approved variance which permitted an art gallery on a portion of the second floor in an existing five-story building which expired on August 8, 2010; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. R8B/R10 zoning district.

PREMISES AFFECTED – 4 East 77<sup>th</sup> Street, south side of East 77<sup>th</sup> Street, between Fifth and Madison Avenues, Block 1391, Lot 69, Borough of Manhattan.

**COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

**209-04-BZ**

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application August 14, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use. M2-1 zoning district, which expired on July 19, 2012.

PREMISES AFFECTED – 109-09 15<sup>th</sup> Avenue, corner lot of 15<sup>th</sup> Avenue and 110<sup>th</sup> Street. Block 4044, Lot 60. Borough of Queens.

**COMMUNITY BOARD #7Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

# MINUTES

Negative:.....0  
**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.  
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## **98-06-BZ/284-06-A**

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

### **COMMUNITY BOARD #14Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 10 A.M., for decision, hearing closed.  
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## **143-07-BZ**

APPLICANT – Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application July 16, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a three-story and cellar synagogue, which expired on July 22, 2012. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, northeast corner of Strickland Avenue and East 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #18BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.  
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## **197-08-BZ**

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #9BK**

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for continued hearing.  
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## **APPEALS CALENDAR**

### **232-10-A**

APPLICANT – OTR Media Group, Incorporated, for 4<sup>th</sup> Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 zoning district.

PREMISES AFFECTED – 59 Fourth Avenue, 9<sup>th</sup> Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

### **COMMUNITY BOARD #3M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.  
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### **103-12-A**

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

### **COMMUNITY BOARD #2BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5  
Negative:.....0  
**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 10 A.M., for decision, hearing closed.

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## 114-12-A

APPLICANT – Leavitt, Kerson & Duane by Paul E. Kerson for Astoria Landing Inc., owner.

SUBJECT – Application April 24, 2012 – Appeal challenging Department of Buildings’ determination that an existing sign is not a legal non-conforming advertising sign. R5B zoning district.

PREMISES AFFECTED – 24-59 32<sup>nd</sup> Street, 32<sup>nd</sup> Street at Grand Central Parkway Service Road, Block 837, Lot 95, Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

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## 136-12-A

APPLICANT – Fried Frank, LLP for Van Wagner Communications, lessee.

OWNER OF PREMISES – Point 27 LLC.

SUBJECT – Application April 26, 2012 – Appeal from Department of Buildings’ determination that an existing sign is not a legal non-conforming advertising sign. R4 zoning district.

PREMISES AFFECTED – 37-27 Hunter’s Point between Greenpoint Avenue and 38<sup>th</sup> Street, Block 234, Lot 31, Borough of Queens.

### COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 23, 2012 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 93-11-BZ

#### CEQR #11-BSA-112K

APPLICANT – Moshe M. Friedman, P.E., for Yeshiva Ore Mordechai, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-19) to allow the conversion of the third and fourth floors in an existing four-story factory and warehouse building to a Use Group 3 school (*Yeshiva Ore Mordechai*). M1-1 zoning district

PREMISES AFFECTED – 1536 62<sup>nd</sup> Street, aka 1535 63<sup>rd</sup> Street, Block 5530, Lot 19, Borough of Brooklyn.

#### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 21, 2011, acting on Department of Buildings Application No. 320035984, reads in pertinent part:

Conversion of Existing Building for use as a school (Use Group 3) is contrary to:

ZR 42-10 Use Group as school use (UG 3) is not permitted in a M1-1 zone.

And requires a special permit from the Board of Standards and Appeals as per ZR § 73-19; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-1 zoning district, the proposed use of a portion of an existing three-story and mezzanine building by a Use Group 3 school, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 3, 2012, after due notice by publication in the *City Record*, with continued hearings on June 19, 2012, July 17, 2012 and August 21, 2012, and then to decision on October 23, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommended disapproval of the original iteration of this

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application, citing concerns with additional traffic and congestion at this location; and

WHEREAS, New York City Council Members Sara M. Gonzalez and David G. Greenfield recommend approval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of Yeshiva Ore Mordechai (the "Yeshiva"), a not-for-profit school; and

WHEREAS, the site is located on a through lot with frontage on 62<sup>nd</sup> Street and 63<sup>rd</sup> Street, between 15<sup>th</sup> Avenue and 16<sup>th</sup> Avenue, within an M1-1 zoning district; and

WHEREAS, the site has a lot area of 12,202 sq. ft.; and

WHEREAS, the site is currently occupied by an existing three-story and mezzanine building with a furniture store (Use Group 6) on the 62<sup>nd</sup> Street side of the first floor and a warehouse on the 63<sup>rd</sup> Street side of the first floor, storage at the mezzanine level, and with the second and third floors remaining vacant; and

WHEREAS, the applicant proposes to convert the entire second and third floors, and portions of the first floor and mezzanine to a Use Group 3 school with a floor area of 28,871 sq. ft. (2.37 FAR); the first floor and mezzanine on the 62<sup>nd</sup> Street side of the building will continue to be occupied by a furniture store (Use Group 6) and storage, respectively, resulting in a total floor area for the building of 35,113 sq. ft. (2.88 FAR); and

WHEREAS, the proposed Yeshiva will have the following uses: (1) an office, lobby, indoor play area/lunch room, and school bus parking, at the first floor (limited to the 63<sup>rd</sup> Street side of the building); (2) storage for the Yeshiva at the mezzanine level (limited to the 63<sup>rd</sup> Street side of the building); (3) offices, classrooms, a nursery, a resource room, and a lounge at the second floor; (4) offices, classrooms, a resource room, and a cafeteria at the third floor; and (5) an outdoor play area on the roof; and

WHEREAS, the applicant originally proposed for the Yeshiva to occupy only the second and third floors, while maintaining retail and warehouse uses at the entire first floor and mezzanine level, with an entrance for the Yeshiva via a stairway along 62<sup>nd</sup> Street; and

WHEREAS, in response to concerns raised by the Board and certain members of the community, the applicant revised its proposal to have the Yeshiva occupy the first floor and mezzanine on the 63<sup>rd</sup> Street side of the building, remove the warehouse use from the building, relocate the entrance to the Yeshiva to the 63<sup>rd</sup> Street side of the building, provide separation between the Yeshiva and the furniture store use, and reduce the floor space occupied at the mezzanine level; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-1 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to

demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the proposed building will serve an estimated 368 students from pre-K through 11<sup>th</sup> grade; and

WHEREAS, the applicant states that the School's program requires a building with at least 20,000 sq. ft. of available space; and

WHEREAS, the applicant further states that due to the School's requirements and because the majority of the students are anticipated to live in the Borough Park community, it conducted a search for a suitable location for the School in that area; and

WHEREAS, the applicant states that the Yeshiva is currently renting space in different locations in Borough Park, as it has been unable to locate a building that was large enough to accommodate the entire student enrollment; and

WHEREAS, the applicant further states that it is necessary to locate the Yeshiva in a single building because having multiple locations is impractical and inefficient, as well as disruptive to the continuity and consistency that the children require for their optimal growth and education; and

WHEREAS, the applicant represents that it conducted a search which specifically evaluated the feasibility of five different Brooklyn buildings in nearby zoning districts where schools are permitted as-of-right: 4219 15<sup>th</sup> Avenue, 5815 20<sup>th</sup> Avenue, 4515 New Utrecht Avenue, 1774 58<sup>th</sup> Street, and 1507 42<sup>nd</sup> Street; and

WHEREAS, the applicant states that, for various reasons, it was unable to obtain any of the other five buildings it evaluated for the development of a school; and

WHEREAS, specifically, the applicant states that the buildings at 5815 20<sup>th</sup> Avenue, 1774 58<sup>th</sup> Street, and 1507 42<sup>nd</sup> Street were not feasible due to their limited size, which would have prevented the school from locating the pre-school, elementary, middle, and high school students in a single building in accordance with the Yeshiva's needs; and

WHEREAS, the applicant further states that 4219 15<sup>th</sup> Avenue was not feasible because it was occupied by an existing tenant, and 4515 New Utrecht Avenue was a much larger site than the Yeshiva required and was determined to be financially infeasible; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located within 400 feet

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of an R5 zoning district to the southwest of the site, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant submitted a noise assessment report based on the results of noise monitoring carried out at the site, which states that the noise levels outside the proposed site fall within marginally acceptable limits for school use; and

WHEREAS, the noise assessment report submitted by the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district can be provided through the installation of an alternate means of ventilation so that the Yeshiva can operate with a closed window condition; accordingly, the applicant states that it will provide central air/heating, which would allow the windows to remain closed in all weather conditions; and

WHEREAS, at hearing, the Board raised concerns about the ability to separate the Yeshiva from the effects of the furniture store use that is located in the subject building, particularly given that the furniture store has a loading dock on 63<sup>rd</sup> Street, along the frontage for the proposed Yeshiva; and

WHEREAS, in response, the applicant states that the proposed Yeshiva and the furniture store use will be completely separated, as the furniture store will be located on the first floor of the 62<sup>nd</sup> Street side of the building, with accessory storage for the furniture store located at the mezzanine level on the 62<sup>nd</sup> Street side of the building, while the Yeshiva will be located only on the 63<sup>rd</sup> Street side of the building at the first floor and mezzanine level, and will occupy the entire third and fourth floors; and

WHEREAS, the applicant further states that the Yeshiva and the furniture store will be separated by partitions at the first floor and mezzanine levels, that the only uses on the first floor of the Yeshiva will be a lobby, an office, and an indoor play area/lunch room, and that the mezzanine level of the Yeshiva will be used for accessory storage; and

WHEREAS, the applicant notes that the loading dock on 63<sup>rd</sup> Street that is currently used by the furniture store will be used for school bus parking by the Yeshiva, and that all loading for the furniture store use will take place on 62<sup>nd</sup> Street; and

WHEREAS, the Board finds that the conditions surrounding the site and the installation of an alternate means of ventilation will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to

demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that the majority of students at the Yeshiva will travel to and from school via school buses, while a small number of students will arrive by carpool or will walk to school; and

WHEREAS, the applicant further states that a bus loading area will be provided in front of the building on 63<sup>rd</sup> Street in order to provide a safe and appropriate area for loading and unloading of passengers, without impeding the flow of traffic; and

WHEREAS, the applicant states that the Yeshiva anticipates the total enrollment in pre-K through 11<sup>th</sup> grade to reach a maximum of 368 students during the next five years, with each grade growing to approximately 30 students as adequate classroom space becomes available; and

WHEREAS, the applicant further states that the various grades will be arriving to and departing from the Yeshiva at different times, and therefore there will only be a need to provide up to three buses for each arrival and departure shift; and

WHEREAS, the applicant submitted a table and chart to illustrate the arrival and departure shifts, which reflect that the seventh through 11<sup>th</sup> graders, comprising 150 students, will arrive at 7:30 a.m. and depart at 5:30 p.m. or later, the first through sixth graders, comprising approximately 180 students, will arrive at 9:00 a.m. and depart at 4:30 p.m., and the kindergarteners, comprising approximately 40 students, will arrive at 9:45 a.m. and depart at 3:00 p.m.; and

WHEREAS, the applicant represents that, based on the aforementioned schedule, there will never be more than three school buses arriving at the site during any single arrival or departure shift; and

WHEREAS, the applicant notes that relocating the Yeshiva's entrance to 63<sup>rd</sup> Street also helps accommodate the loading and unloading of students by providing additional frontage space, as the 62<sup>nd</sup> Street frontage measures only 51'-3" while the 63<sup>rd</sup> Street frontage measures 71'-3"; and

WHEREAS, the applicant submitted a traffic study which reflects that there are low traffic volumes on 63<sup>rd</sup> Street and the proposed Yeshiva could operate at the site without significant traffic effects; and

WHEREAS, the applicant notes that the traffic study reflects that there are lower traffic volumes on 63<sup>rd</sup> Street than on 62<sup>nd</sup> Street, where the entrance to the Yeshiva was originally proposed to be located; and

WHEREAS, the applicant also submitted a survey reflecting that there are no commercial curb cuts for loading docks located across from the site on 63<sup>rd</sup> Street, and therefore traffic on the street will not be effected by commercial loading and unloading across from the site; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated August 17, 2011, DOT states that it has no objection to the proposed school, and

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states that it will prepare a school safety map with signs and markings upon the approval and completion of the School; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, as noted above, the applicant originally proposed to locate the entrance to the school along the 62<sup>nd</sup> Street side of the building but revised its proposal to relocate the entrance to the Yeshiva to the 63<sup>rd</sup> Street side of the building in response to concerns raised by the Board and certain members of the community; and

WHEREAS, the applicant notes that there are eight residential properties located directly across from the site on 63<sup>rd</sup> Street and fewer industrial sites than the 62<sup>nd</sup> Street side of the building, and therefore the 63<sup>rd</sup> Street side of the building is more consistent with a school use than the 62<sup>nd</sup> Street side of the building; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA112K, dated May 31, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed the August 2011 Construction Health and Safety Plan (CHASP); and

WHEREAS, DEP issued a November 14, 2011 letter

requesting additional information in the CHASP and stating that, upon completion of the project, a Remedial Closure Report be submitted to DEP for review and approval; and

WHEREAS, DEP reviewed the applicant's September 2012 stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the applicant's April 2012 noise assessment; and

WHEREAS, DEP determined that, with the use of the proposed central air-conditioning and heating system as an alternate means of ventilation, the proposed project is not anticipated to result in significant noise impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow, within an M1-1 zoning district, the proposed use of a portion of an existing three-story and mezzanine building by a Use Group 3 school, contrary to ZR § 42-10; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 7, 2012" - (12) sheets and *on further condition*:

THAT all loading and unloading for the non-school use on the site will take place on 62<sup>nd</sup> Street;

THAT the non-school portion of the subject building must comply with all M1 district performance regulations;

THAT the applicant will submit to DEP for review and approval a revised CHASP which incorporates comments from DEP's December 14 2011 letter;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with documentation of DEP's approval of the Remedial Closure Report;

THAT the applicant will employ central air-conditioning and heating as an alternate means of ventilation throughout the entire building to maintain a closed window condition at all times;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

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THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

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**104-11-BZ**

**CEQR #12-BSA-004K**

APPLICANT – Eric Palatnik, P.C., for Leonard Gamss, owner.

SUBJECT – Application July 25, 2011 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1936 East 26<sup>th</sup> Street, between Avenues S and T, Block 7304, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 17, 2012, acting on Department of Buildings Application No. 300825775, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the required 65%.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum required 35%.
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the 30'-0".
5. Plans are contrary to ZR 23-461(a) in that the existing minimum side yard are less than the required minimum 5'-0".
6. Proposed plans are contrary to ZR 23-631(b) in that the perimeter wall height exceeds 21'-0"; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space, lot coverage, side

yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on February 7, 2012 after due notice by publication in *The City Record*, with continued hearings on April 3, 2012, May 8, 2012, June 19, 2012, August, 7, 2012, and September 25, 2012, and then to decision on October 23, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the west side of East 26<sup>th</sup> Street between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 3,186 sq. ft. (0.80 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject home initially had a floor area of approximately 1,124 sq. ft. (0.28 FAR), and was subsequently enlarged to its current floor area of 3,186 sq. ft. (0.80 FAR), which the applicant now seeks to legalize; the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to legalize the current home's open space of 57 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to legalize the current home's lot coverage of 43 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed legalization will maintain the previously-existing non-complying side yard with a width of 4'-6" along the northern lot line and a width of 8'-3" along the southern lot line (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed legalization will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant proposes to legalize the current home's perimeter wall height of 22'-7" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-2 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, the applicant initially submitted a survey indicating that the adjacent home located at 1934 East 26<sup>th</sup> Street had a perimeter wall height of 25'-1 ¾"; and

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WHEREAS, at hearing, the Board questioned whether the applicant could rely on the perimeter wall height of the adjacent home, as the 25'-1 3/4" height indicated on the survey was contrary to the approval granted by the Board to 1934 East 26<sup>th</sup> Street under BSA Cal. No. 295-08-BZ; and

WHEREAS, in response, the applicant represents that the perimeter wall height of the adjacent home in the original survey was measured incorrectly, and that the adjacent home was actually constructed with a perimeter wall height of 22'-7" as approved by the Board under BSA Cal. No. 295-08-BZ; and

WHEREAS, the applicant submitted an updated survey which reflects that the perimeter wall height of the adjacent home at 1934 East 26<sup>th</sup> Street is 22'-7"; and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21'-0"; and

WHEREAS, at hearing, the Board directed the applicant to document which portions of the original home have been retained; and

WHEREAS, in response, the applicant submitted revised plans indicating that portions of the cellar and first floor walls and floors have been retained; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, within an R2 zoning district, the legalization of an enlargement to a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-631; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed

with this application and marked "Received June 6, 2012"- (10) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,186 sq. ft. (0.80 FAR); a minimum open space of 57 percent; a maximum lot coverage of 43 percent; a side yard with a minimum width of 4'-6" along the northern lot line; a side yard with a minimum width of 8'-3" along the southern lot line; a rear yard with a minimum depth of 20'-0"; and a maximum perimeter wall height of 22'-7", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 192-11-BZ

APPLICANT – Eric Palatnik, P.C., for Alex Veksler, owner.

SUBJECT – Application December 21, 2011 – Variance (§72-21) to allow for the development of a Use Group 3 child care center, contrary to minimum lot width/area (§23-35), and required parking (§25-624). R2/LDGMA zoning district.

PREMISES AFFECTED – 2977 Hylan Boulevard between Isabella Avenue and Guyon Avenue, Block 4301, Lot 36 & 39, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 66-12-BZ

### CEQR #12-BSA-098M

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Nicholas Parking Corp./Owner of Lot 30, owner; Ladera, LLC, Owner of Lot 35, lessee.

SUBJECT – Application March 20, 2012 – Variance (§72-21) to permit a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations. R7A, R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 Nicholas Avenue, aka 305 W. 121<sup>st</sup> Street and W. 122<sup>nd</sup> Street, Block 1948, Lot 30, 35, Borough of Manhattan.

### COMMUNITY BOARD #10M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

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#### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 23, 2012, acting on Department of Buildings Application No. 120562284, reads, in pertinent part:

1. ZR 22-00 The proposed commercial use in an R7A residential zoning district is contrary to ZR 22-00.
2. ZR 23-145 The proposed lot coverage, for a corner lot portion of a zoning lot, exceeds the maximum allowed by ZR 23-145.
3. ZR 25-23 The proposed (0) accessory residential parking spaces is less than that required by ZR 25-23.; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, the proposed construction of a 13-story mixed-use residential/ commercial/ community facility building that does not comply with use and parking regulations and exceeds the permitted lot coverage, contrary to ZR §§ 22-00, 23-145, and 25-23; and

WHEREAS, a public hearing was held on this application on August 14, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 25, 2012, and then to decision on October 23, 2012; and

WHEREAS, Community Board 10, Manhattan, recommends disapproval of this application, citing a concern that affordable housing was not included; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Lots 30 and 35 (the “Project Site”) on the block bounded by St. Nicholas Avenue, West 22<sup>nd</sup> Street,

West 121<sup>st</sup> Street, and Manhattan Avenue are part of a larger zoning lot that will also include Lots 24, 25, 26, 29, and 40 (a/k/a condominium lots 1001-1006) collectively (the “Zoning Lot”); and

WHEREAS, the subject application concerns proposed construction only on the Project Site; and

WHEREAS, the Project Site’s lot area is 20,606 sq. ft., which occupies most of the western block front of St. Nicholas Avenue between West 121<sup>st</sup> Street and West 122<sup>nd</sup> Street and is currently occupied by a two-story garage (Lot 30) and a gas station (Lot 35); and

WHEREAS, the applicant is also seeking an approval from the City Planning Commission for a floor area bonus associated with the FRESH Program, pursuant to ZR § 63-211, and an authorization for the proposed height, pursuant to ZR § 63-22; and

WHEREAS, the applicant proposes to construct a 13-story, 169,192 sq. ft. mixed-use building with the following uses: (1) a FRESH food store with a floor area of 16,710 sq. ft. on the first floor and 11,340 sq. ft. of floor space in the cellar; (2) a preschool with a floor area of 15,551 sq. ft. of community facility floor area on the second floor, with a first floor entrance and lobby on West 121<sup>st</sup> Street; and (3) 164 residential units with a total floor area of 136,931 sq. ft. (including the 15,936 sq. ft. of FRESH bonus floor area) and a first floor lobby on West 122<sup>nd</sup> Street; and

WHEREAS, the variance is required because the applicant seeks to (1) occupy 970 sq. ft. of commercial use (above and below grade) within the R7A portion of the site; (2) distribute the lot coverage without regard to corner or interior lot portions; and (3) reduce the number of required accessory parking spaces; and

WHEREAS, the applicant states that the proposed building will comply with all relevant floor area regulations, across the zoning lot (which includes the Project Site and the additional lots) and will comply with street wall location, maximum street wall height, and minimum setback requirements; and

WHEREAS, however, the applicant asserts that because of the unique shape of the Project Site, two small triangular portions of it totaling 744 sq. ft. of lot area and 907 sq. ft. of FRESH food store floor space (744 sq. ft. on the first floor and 163 sq. ft. in the cellar) are located in the R7A zoning district, contrary to use regulations; and

WHEREAS, additionally, the applicant notes that it does not comply with lot coverage regulations in that each corner lot, through lot, or interior lot portion of a zoning lot must separately and individually comply with the maximum lot coverage requirement for such portion; specifically, under ZR § 77-24, for zoning lots divided by zoning district boundaries, the maximum permitted lot coverage for each corner lot, through lot or interior lot portion of the zoning lot must be calculated separately for each zoning district within which each portion is located; and

WHEREAS, the applicant notes that although the proposal reflects 965 sq. ft. less total lot coverage (24,042 sq. ft.) than the total maximum lot coverage permitted (25,007 sq.

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ft.) and the West 121<sup>st</sup> Street and St. Nicholas Avenue corner lot portions and the St. Nicholas Avenue and West 121<sup>st</sup> Street interior lot portions have less than the permitted maximum lot coverage, the West 122<sup>nd</sup> Street and St. Nicholas Avenue corner lot portion exceeds the permitted maximum by 689 sq. ft.; and

WHEREAS, as to parking, one parking space is required for 50 percent of the dwelling units in the R7A portion of the site and for 40 percent of the dwelling units in the R8A portion of the site; because the proposal reflects 164 dwelling units (eight in the R7A portion of the site and 144 in the R8A(C2-4) portion of the site), a total of 66 parking spaces is required (four for the R7A dwelling units and 62 for the R8A (C2-4) dwelling units); and

WHEREAS, the applicant proposes to provide 30 of the 66 required parking spaces off-site at 2280 Frederick Douglas Boulevard, one block north and across the street from the Project Site, which is also owned by the applicant; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying district regulations: (1) the irregular shape of the Project Site; (2) the split zoning of the Project Site and the Zoning Lot; (3) the proximity of the Eighth Avenue subway to the Project Site's St. Nicholas Avenue street line, (4) the high water table; and (5) the existence of hazardous materials due to the historic use of the site by automotive uses; and

WHEREAS, as to the irregular shape, the applicant states that (1) St. Nicholas Avenue runs at an approximately 45 degree angle through the otherwise rectilinear street grid and (2) the Project Site wraps around Lot 29 at the corner of St. Nicholas Avenue and West 121<sup>st</sup> Street; and

WHEREAS, the applicant states that the site is a highly irregular polygon, with multiple different interior angles, including 45, 90, 135, and 270 degrees and with only two of its eight sides having the same dimension; and

WHEREAS, the applicant asserts that the highly irregular shape makes it impossible to design a symmetrical or rectilinear building that is more efficient and economical to construct; and

WHEREAS, further, the applicant states that because the Project Site is located between two cross streets and the block has a depth of 201.84 feet, it is divided into multiple corner and interior lot portions, including two corner lot portions and two interior lot portions and all of the different lot portions are also of irregular shape; and

WHEREAS, the applicant asserts that the irregular shape creates a practical difficulty in complying with lot coverage and use regulations; and

WHEREAS, as to the split zoning lot, the applicant asserts that the portion of the Project Site and Zoning Lot that is within 100 feet of St. Nicholas Avenue is zoned R8A with a C2-4 overlay and the remainder is zoned R7A; therefore, while most of the Project Site is located within the R8A (C2-4) zoning district (18,761 sq. ft.), a portion (1,935 sq. ft.) is located in the R7A zoning district; and

WHEREAS, the applicant notes that the zoning district

boundary line runs diagonally through the site; and

WHEREAS, as to the proximity to the subway, the applicant states that the MTA's Eighth Avenue subway line runs along St. Nicholas Avenue in front of the Project Site, at a distance from the site ranging from five feet (at the West 121<sup>st</sup> Street end of the site) to 31 feet (at the West 122<sup>nd</sup> Street end of the site); and

WHEREAS, further, the applicant notes that a 24-inch sewer is located between the site and the subway, getting as close as 12 inches to the site; and

WHEREAS, the applicant asserts that due to these conditions, construction requires a permit from the MTA, which includes engineering review and approval by the MTA and adherence to strict vibration limits and continuous monitoring; and

WHEREAS, the applicant represents that certain standard construction methods such as pile-driving are not permitted due to the vibrations they create and that the construction will require additional sheeting and shoring as part of the foundation system, which incur construction premiums; and

WHEREAS, as to the uniqueness of the condition, the applicant states that while there are other sites in the area that front on the subway line, it is not found generally; specifically, of the more than 100 properties on the three blocks between West 121<sup>st</sup> Street and West 122<sup>nd</sup> Street from Morningside Avenue to Adam Clayton Powell Boulevard, the Project Site is one of only ten that front on the subway; and

WHEREAS, further, the applicant submitted a map, which reflects that within the extended area bounded by Morningside Avenue/Manhattan Avenue and Adam Clayton Powell Boulevard between Central Park North and St. Nicholas Park/West 128<sup>th</sup> Street, there are a total of 1,127 individual properties, of which a total of 103 (9.1 percent) front on the subway that runs beneath Frederick Douglas Boulevard and St. Nicholas Avenue; and

WHEREAS, the applicant asserts that even among the 103 properties fronting on the subway, the Project Site is unique in that a portion of the site is only five feet from the subway tunnel due to the fact that the subway turns the corner at 121<sup>st</sup> Street, from St. Nicholas Avenue to Frederick Douglas Boulevard; and

WHEREAS, additionally, the applicant states that the Project Site is within 4.5 feet of a subsurface fan chamber at the middle of the St. Nicholas Avenue frontage; and

WHEREAS, the applicant asserts that it is the only one of more than 100 properties in the vicinity that is in such close proximity to the subway tunnel; and

WHEREAS, in contrast, the applicant submitted maps reflecting that many of the sites adjacent to the subway line are between 70 and 100 feet from the tunnel; and

WHEREAS, the applicant states that all other sites within the extended survey area, that are as close to the subway tunnel as the subject site, are occupied by buildings built before the subway tunnel was constructed in 1932; and

WHEREAS, the applicant asserts that the construction premiums associated with the irregular shape and the

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proximity to the subway tunnel necessitate that the cellar be used for an income-generating purpose, rather than for the required accessory parking; and

WHEREAS, the applicant represents that the food store requires a second floor for storage and other uses in order to be functional; and

WHEREAS, as to the water table, the applicant states that water is encountered at a depth of approximately 18 feet and, thus, the depth of the cellar is proposed at 15 feet, so as to avoid the high costs of dewatering; and

WHEREAS, accordingly, the applicant asserts that it would be too costly to construct a sub-cellar so that both the FRESH market and the required parking could be provided below grade; and

WHEREAS, as to hazardous materials and soil contamination, the applicant states that the historic use of the Project Site has been for a garage and a gas station use and that there are underground and aboveground gas storage tanks still in place; and

WHEREAS, the applicant states that there have been several subsurface investigations which have documented the existence of 15 gasoline storage tanks on the gas station site (Lot 35) and potentially three underground storage tanks on the garage site (Lot 30), which have led to contamination with primarily petroleum-based contaminants; and

WHEREAS, due to the evidence of contamination, the applicant filed an application with the New York State Department of Environmental Conservation for inclusion in the New York State Brownfield Cleanup Program; and

WHEREAS, under the Brownfield Cleanup Agreement, the applicant will prepare a Remedial Investigation Report, Remedial Action Work Plan, a Construction Health and Safety Plan and a Community Air Monitoring Program; and

WHEREAS, the applicant has identified premium construction costs associated with the remediation of the site; and

WHEREAS, the Board inquired into whether the applicant would be eligible for a Brownfield Redevelopment Tax Credit and the applicant replied that it would be eligible for \$2,331,000 of discretionary, after-tax credits; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a complying development consisting of the proposed uses with the proposed amount of floor area and height, but with a smaller FRESH food store that does not extend into the R7A zoning district and which accommodates the required parking in the cellar, but only 144 dwelling units; (2) a lesser variance building with all required parking spaces and less floor area for the FRESH food store and, thus no need for the use waiver, but maintaining the proposed non-complying lot coverage, and providing 162 dwelling units; and (3) the proposed building, with the FRESH food store at the first

floor and cellar level, no parking onsite, and 164 dwelling units; and

WHEREAS, the study concluded that neither the complying development nor the lesser variance scenario would result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the Board directed the applicant to explain the effect of the Brownfield tax credits, and the applicant stated that even with the tax credits, the proposal did not realize a reasonable rate of return for a completely as-of-right proposal; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that only 744 sq. ft. of above grade FRESH food store space is within the R7A zoning district and thus contrary to use regulations, and that the remainder of the uses on the 20,606 sq. ft. lot area of the Project Site conform with use regulations; and

WHEREAS, further, the applicant states that St. Nicholas Avenue is a major thoroughfare, which was zoned for local retail use by the Department of City Planning's 2003 rezoning so as to encourage the development of additional commercial uses on this portion of the avenue; and

WHEREAS, as to the lot coverage, the applicant asserts that the waiver will allow for 689 sq. ft. of excess lot coverage in the West 122<sup>nd</sup> Street and St. Nicholas Avenue corner of the site to be offset by an equal amount of open space in the West 121<sup>st</sup> Street and St. Nicholas Avenue corner of the site; and

WHEREAS, the applicant notes that if taken as a whole, the lot coverage across the site complies with total lot coverage regulations and, in fact will have 965 sq. ft. more of open space than required; and

WHEREAS, further, the applicant notes that the lot coverage and open space requirement is not applicable to the ground floor, which will be occupied by a commercial use, which is a permitted obstruction; and

WHEREAS, as to parking, the applicant studied the factors including the forecasted age and demographics of the future residents of the building, the location and type of building, and the proximity to mass transit and determined that a mostly non-family building close to multiple mass transit options results in a parking demand of as low as 16 percent and at most 18 percent, which is substantially less than the 40 to 50 percent requirements of ZR § 23-145; and

WHEREAS, the applicant asserts that even at 18 percent parking demand, only 30 spaces would be required; and

WHEREAS, the applicant proposes to satisfy its most conservative assessment of demand through 30 parking spaces off-site at 2280 Frederick Douglas Boulevard, one block north and across the street from the Project Site, which is also owned by the applicant; and

WHEREAS, the applicant notes that in addition to the proposed 30 parking spaces, within a half-mile radius of the Project Site, there are 15 off-street parking facilities having a total of 1,590 parking spaces, which would produce an average of 196 available spaces; and

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WHEREAS, additionally, the applicant notes that the area is well-served by public transportation, including the A, C, B, and D lines, which run along St. Nicholas Avenue and Frederick Douglas Boulevard; and the 1, 2, and 3 lines, which run along Broadway and Lenox Avenue, each just three blocks from St. Nicholas Avenue; several bus lines through the north-south and east-west; as well as bicycle lanes; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) 12BSA098M, dated March 5, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, lots 30 and 35 were assigned an “E” designation for hazardous materials as part of the Frederick Douglas Boulevard zoning changes adopted in 2003, and the lots were assigned E-120 under CEQR number 03DCP026M; and

WHEREAS, the “E” designation requires an environmental review by the New York City Office of Environmental Remediation (“OER”), which must be satisfied before DOB will issue building permits for the property; and

WHEREAS, the subject site was also accepted into the New York State Brownfield Cleanup Program (“NYSBCP”) on February 9, 2011 and a Brownfield Cleanup Agreement (“BCA”) was executed by the New York State Department of Environmental Conservation (“DEC”) on March 17, 2011; and

WHEREAS, under the BCA, the applicant is required to submit a Remedial Investigation Report (“RIR”) and Remedial Action Work Plan (“RAWP”) to DEC, the New York State Department of Health (“DOH”) and OER for review and approval; and

WHEREAS, the DEC is currently reviewing the RAWP;

and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, on a site partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, the proposed construction of a 13-story mixed-use residential/commercial/community facility building that does not comply with use and parking regulations and exceeds the permitted lot coverage, contrary to ZR §§ 22-00, 23-145, and 25-23; and *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “October 15, 2012”– twenty (20) sheets; and *on further condition*:

THAT a minimum of 30 accessory residential parking spaces be provided and maintained at 2280 Frederick Douglas Boulevard;

THAT the above condition will be noted on the Certificate of Occupancy;

THAT prior to DOB’s issuance of any building permit, OER must issue a Notice to Proceed pursuant to the site’s “E” designation and the NYS Brownfield Cleanup Agreement;

THAT prior to DOB’s issuance of a Certificate of Occupancy, OER must issue a Certificate of Completion and a Notice of Satisfaction;

THAT the parameters of the proposed building include the following: a maximum of 164 dwelling units; a residential floor area of 136,931 sq. ft. a commercial floor area of 16,710 sq. ft.; a community facility floor area of 15,551 sq. ft.; and a total floor area of 169,192 sq. ft., as reflected on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the Board has not waived floor area or height regulations and notes that (1) the proposed floor area relies on certification by the City Planning Commission to allow a bonus of 15,936 sq. ft. associated with the FRESH Program, pursuant to ZR § 63-211 and (2) the height relies on an authorization by the City Planning Commission to allow the proposed height associated with the FRESH Program, pursuant to ZR § 63-22; in the absence of such actions, the applicant must revise its plan and comply with underlying floor area and height regulations;

THAT this approval is limited to the relief granted by

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the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 86-12-BZ

### CEQR #12-BSA-114M

APPLICANT – Jeremiah H. Candreva, Esq., Troutman Sanders LLP, for Parkwood Realty Associates, LLC c/o Park It Management Co., owner.

SUBJECT – Application April 9, 2012 – Special Permit (§73-63) to allow for the residential enlargement of an existing commercial building above the maximum permitted floor area (by 1,366 square feet). C2-5/R8B zoning district.

PREMISES AFFECTED – 158 West 83<sup>rd</sup> Street, western boundary of the site is 150’ east of Amsterdam Avenue on West 83<sup>rd</sup> Street, Block 1213, Lot 58, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 3, 2012, acting on Department of Buildings Application No. 104813613, reads in pertinent part:

The property located at 158 West 83<sup>rd</sup> Street (Block 1213, Lot 58) in Manhattan is subject to an existing variance pursuant to 536-37-BZ. The proposed alteration and enlargement is therefore subject to BSA approval. Consequently, seek and obtain the approval of the BSA pursuant to Section 73-63 of the zoning resolution; and

WHEREAS, this is an application under ZR §§ 73-63 and 73-03 to permit the enlargement of an existing two-story non-residential building containing PCE use, within an R8B (C2-5) zoning district, which creates a non-compliance with regard to floor area contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in *The City Record*, and then to decision on October 23, 2012; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of West 83<sup>rd</sup> Street, between Amsterdam Avenue and Columbus Avenue, with a lot area of 6,606 sq. ft. and is within an R8B (C2-5) zoning district; and

WHEREAS, the site is occupied by a two-story building with a height of approximately 28.25 feet, a floor area of 12,702 sq. ft., and an FAR of 1.92; and

WHEREAS, the building was constructed pursuant to a Board variance in 1960, under BSA Cal. No. 536-37-BZ, to allow the construction of a second floor extension at full lot coverage, which extended the commercial use into the residential portion of the lot, exceeded the permitted lot coverage, did not provide the required rear yard, and extended the commercial use into the second floor; and

WHEREAS, the applicant states that since the site is now zoned R8B (C2-5), the restriction on the commercial use is no longer applicable as such use conforms to current zoning district regulations; and

WHEREAS, as to the encroachment of the second floor, the applicant states that it remains as approved under the variance and, thus the failure to provide a rear yard with a depth of 20’-0” at the second floor is a legal non-complying condition; and

WHEREAS, the applicant proposes to provide a setback of 15 feet along the front lot line above a fifth story and to provide a rear setback with a depth of 41.74 feet above the second story; and

WHEREAS, the building is occupied by a PCE, operated as Crunch Fitness pursuant to a special permit through BSA Cal. No. 244-97-BZ, which will remain; and

WHEREAS, the applicant states that the building has been continuously used for non-residential purposes since its construction; and

WHEREAS, the proposal reflects a four-story enlargement to the existing building, which results in a streetwall height of 60 feet and a total height of 72.33 feet, and an increase in the floor area from 12,702 sq. ft. (1.92 FAR) to 27,792 sq. ft. (4.2 FAR); and

WHEREAS, the subject zoning district permits a maximum residential FAR of 4.0 and a maximum commercial FAR of 2.0; the maximum floor area permitted is 26,424 sq. ft.; and

WHEREAS, the proposed enlargement will increase the floor area to approximately 4.9 percent (1,367 sq. ft.) above the maximum permitted floor area of 26,424 sq. ft.; and

WHEREAS, the applicant states that the increase in floor area allows for improved design for 12 rear-facing one-bedroom apartments; and

WHEREAS, pursuant to ZR § 73-63, the Board may grant a request for alteration and enlargement of a non-residential building constructed prior to December 15, 1961, provided that such enlargement does not exceed ten percent above the maximum allowable floor area ratio for the subject zoning district, or 10,000 sq. ft. in floor area and does not

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create any new non-compliance; and

WHEREAS, the proposed enlargement in excess of what is permitted is 1,367 sq. ft., which is less than the maximum permitted 10,000 sq. ft.; and

WHEREAS, the final FAR of 4.2 proposed by the applicant does not exceed ten percent above the maximum allowable for the subject zoning district; and

WHEREAS, accordingly, the Board notes that the proposed final FAR of 4.2 is permitted under ZR § 73-63; and

WHEREAS, the proposed enlargement will be built within the as-of-right building envelope and will not create any new non-compliance or increase the amount of non-compliance except as described above; and

WHEREAS, in response to the Community Board's concerns, the applicant agrees to ensure that rooftop mechanicals will comply with Noise Code regulations, which is an improvement of the current condition; and

WHEREAS, accordingly the Board has determined that the evidence in the record supports the findings to be made under ZR § 73-63; and

WHEREAS, pursuant to ZR § 73-03, the Board may not grant a request for alteration and enlargement of the site, if such enlargement would either: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; or (4) interfere with any pending public improvement project; and

WHEREAS, based on the above, the Board finds that this action will neither: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; nor (4) interfere with any pending public improvement project ;and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-03; and

WHEREAS, the project is classified as a unlisted action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA114M, dated April 4, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and

Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a negative declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR §§ 73-63 and 73-03 and grants a special permit pursuant, limited to the objections cited, to permit the enlargement of an existing two-story non-residential building containing PCE use, within an R8B (C2-5) zoning district, which creates a non-compliance with regard to floor area contrary to ZR § 23-142; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 29, 2012" – eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed enlarged building: a total floor area of 27,291 sq. ft., and an FAR of 4.2, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed within four years of the date of this resolution; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, October 23, 2012.

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**193-12-BZ  
CEQR #12-BSA-144M**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vornado Realty Trust, owner; Soul Cycle 384 Lafayette Street, LLC, lessee.

SUBJECT – Application June 14, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Soul Cycle*) within a portion of an existing building. M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street (a/k/a 692 Broadway, 2/20 East 4<sup>th</sup> Street) southwest corner of intersection of Lafayette Street and E. 4<sup>th</sup> Street, Block 531, Lot 7401, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough  
Commissioner, dated June 5, 2012, acting on Department of  
Buildings Application No. 121062722, reads in pertinent  
part:

Proposed change of use to a physical culture  
establishment, as defined by ZR 12-10, is  
contrary to ZR 42-10 and must be referred to  
the Board of Standards and Appeals for  
approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36  
and 73-03, to permit, on a site within an M1-5B zoning  
district within the NoHo Historic District, the operation of a  
physical culture establishment (PCE) on a portion of the  
cellar level and first floor of a 12-story mixed-use  
commercial/manufacturing/residential building, contrary to  
ZR § 42-10; and

WHEREAS, a public hearing was held on this  
application on September 25, 2012, after due notice by  
publication in *The City Record*, and then to decision on  
October 23, 2012; and

WHEREAS, the premises and surrounding area had a  
site and neighborhood examination by Commissioner  
Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan,  
recommends approval of this application; and

WHEREAS, the subject site is located on a site with  
frontage on Broadway, East 4<sup>th</sup> Street, and Lafayette Street,  
in an M1-5B zoning district within the NoHo Historic  
District; and

WHEREAS, the site is the subject of a prior PCE  
special permit approval for a Blink Fitness, pursuant to BSA  
Cal. No. 33-10-BZ; and

WHEREAS, the site is occupied by a mixed-use  
commercial/manufacturing/residential building, known as  
the Silk Building; and

WHEREAS, the applicant submitted a Certificate of  
No Effect from the Landmarks Preservation Commission  
(LPC), dated September 17, 2012, approving the proposed  
signage and other modifications under its jurisdiction; and

WHEREAS, the proposed PCE will occupy 3,294 sq. ft.  
of floor area on the first floor and 1,873 sq. ft. of floor space  
in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle;  
and

WHEREAS, the applicant represents that the services  
at the PCE include facilities for instruction and programs for  
physical improvement; and

WHEREAS, the applicant proposes the following  
hours of operation: Monday to Saturday, 5:30 a.m. to 11:00  
p.m. and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the Board finds that this action will  
neither 1) alter the essential character of the surrounding  
neighborhood; 2) impair the use or development of adjacent

properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has  
performed a background check on the corporate owner and  
operator of the establishment and the principals thereof, and  
issued a report which the Board has determined to be  
satisfactory; and

WHEREAS, the PCE will not interfere with any  
pending public improvement project; and

WHEREAS, the Board finds that, under the conditions  
and safeguards imposed, any hazard or disadvantage to the  
community at large due to the proposed special permit use is  
outweighed by the advantages to be derived by the  
community; and

WHEREAS, therefore, the Board has determined that  
the evidence in the record supports the requisite findings  
pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action  
pursuant to 6 NYCRR Part 617.12 and 617.4; and

WHEREAS, the Board has conducted an environmental  
review of the proposed action and has documented relevant  
information about the project in the Final Environmental  
Assessment Statement, CEQR No.12BSA144M, dated June  
12, 2012; and

WHEREAS, the EAS documents that the operation of  
the PCE would not have significant adverse impacts on Land  
Use, Zoning, and Public Policy; Socioeconomic Conditions;  
Community Facilities and Services; Open Space; Shadows;  
Historic Resources; Urban Design and Visual Resources;  
Neighborhood Character; Natural Resources; Hazardous  
Materials; Waterfront Revitalization Program; Infrastructure;  
Solid Waste and Sanitation Services; Energy; Traffic and  
Parking; Transit and Pedestrians; Air Quality; Noise;  
Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the  
environment that would require an Environmental Impact  
Statement are foreseeable; and

WHEREAS, the Board has determined that the  
proposed action will not have a significant adverse impact on  
the environment.

*Therefore it is Resolved* that the Board of Standards and  
Appeals issues a Type I action prepared in accordance with  
Article 8 of the New York State Environmental Conservation  
Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of  
Procedure for City Environmental Quality Review and  
Executive Order No. 91 of 1977, as amended, and makes each  
and every one of the required findings under ZR §§ 73-36 and  
73-03 to permit, on a site within an M1-5B zoning district  
within the NoHo Historic District, the operation of a  
physical culture establishment on a portion of the cellar level  
and first floor of a 12-story mixed-use  
commercial/manufacturing/residential building, contrary to  
ZR § 42-10; *on condition* that all work shall substantially  
conform to drawings filed with this application marked  
“Received June 14, 2012” - Four (4) sheets and *on further  
condition*:

THAT the term of this grant will expire on October 23,  
2022;

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THAT there will 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 must be performed by New York State licensed massage therapists;

THAT soundproofing will be installed and maintained as reflected on the BSA-approved plans;

THAT all modifications to signage and the façade will be in accordance with the Landmarks Preservation Commission's Certificate of No Effect, dated September 17, 2012;

THAT any modifications will be subject to Landmarks Preservation Commission approval;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 198-12-BZ

### CEQR #12-BSA-146M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for JZS Madison, LLC, owner.

SUBJECT – Application June 22, 2012 – Variance (§72-21) to permit the conversion and enlargement of existing buildings to contain UG 6 retail and UG 2 residential uses, contrary to floor area, lot coverage (§23-145), rear yard (§23-47), rear yard setback (§23-633(b)), height (§§23-691, 99-054(b)), streetwall (§23-692(c), 99-051(a)), inner court (§23-851), window-to-lot-line (§23-861), and commercial use (§32-422) regulations. C5-1(MP), R8B zoning district. PREMISES AFFECTED – 933-943 Madison Avenue, block bounded by Madison and Park Avenues, East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Block 1389, Lot 25, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 23, 2012, acting on Department of Buildings Application No. 121011403, reads, in pertinent part:

1. Lot coverage for interior portion in R8B district exceeds 70%; contrary to ZR 23-145
2. FAR exceeds maximum permitted of 4.0 in R8B portion; contrary to ZR 23-145
3. Proposed rear yard for interior lot portion is less than required 30'-0"; contrary to ZR 23-47
4. Required 10'-0" setback from rear yard line for portion of building that exceeds max base height on interior lot is not provided; contrary to ZR 23-663(b)
5. Proposed height in R8B (LH-1A) portion exceeds 60'-0"; contrary to ZR 23-691;
6. Proposed street wall less than 45'-0" in width facing East 74th Street in C5-1 (MP) portion exceeds height of 80'-0" (width of Madison Avenue); contrary to ZR 23-692(c) and ZR 99-053
7. Proposed inner court (including the area of the non-compliant rear yard) measures less than 1200 sq. ft. and contains a dimension that is less than 30'-0"; contrary to ZR 23-851
8. Proposed legally required window-to-lot line condition is less than 30'-0"; contrary to ZR 23-861
9. Proposed street wall location within 50' of Madison Avenue is contrary to ZR 99-051(a)
10. Required recesses for enlarged portion not provided; contrary to ZR 99-052(a)
11. Height exceeds maximum within Midblock Transition Portion; contrary to ZR 99-054(b)
12. Proposed location of commercial use above residential use is contrary to ZR 32-422; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District (the "Special District") and partially within an R8B(LH-1A) district, and within the Upper East Side Historic District (the "UESHD"), the proposed enlargement of an existing complex of buildings, that does not comply with zoning parameters concerning lot coverage, floor area ratio ("FAR"), rear yard, height and setback, inner courts, minimum distance between legally required windows and the rear lot line, required recesses in the Madison Avenue street wall, and location of commercial use, contrary to ZR §§ 23-145, 23-147, 23-663(b), 23-691, 23-692(c), 99-053, 23-851, 23-861, 99-051(a), 99-052(a), 99-054(b), and 32-422; and

WHEREAS, a public hearing was held on this



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application on September 11, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on October 23, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject zoning lot (Lot 25) consists of former Lots 21, 22, 23, 24, and 25 within Block 1389, which were previously owned by and used in conjunction with the adjoining Whitney Museum of American Art (the "Whitney"); and

WHEREAS, the zoning lot previously included the adjoining Lot 50, which is occupied by the Breuer Building, a five-story building with a height of 97'-8" at 945 Madison Avenue, which serves as the primary museum space for the Whitney; and

WHEREAS, the site is a corner lot located on the northeast corner of the intersection of Madison Avenue and East 74<sup>th</sup> Street, with 100.67 feet of frontage along Madison Avenue, 125 feet of frontage along East 74<sup>th</sup> Street, and a total lot area of 12,621 sq. ft.; and

WHEREAS, the portion of the site that extends 100 feet east of Madison Avenue is located in a C5-1 zoning district and also lies within the Special District; the remainder of the site is located within an R8B(LH-1A) district; and

WHEREAS, the site is currently occupied by the following buildings: (1) a 20'-0" wide, 57'-2" high brownstone at 937 Madison Avenue; (2) a 20'-0" wide, 57'-2" high brownstone at 943 Madison Avenue; (3) a 40'-0" wide, 57'-2" high brownstone at 933-935 Madison Avenue; (4) a 40'-0" wide, 57'-2" high brownstone at 939-941 Madison Avenue; and (5) a combined building at 31-33 East 74<sup>th</sup> Street (which formerly consisted of two separate buildings – a four-story brownstone at 31 East 74<sup>th</sup> Street and a five-story townhouse at 33 East 74<sup>th</sup> Street), with a street wall height of 58'-6" and a total height of 71'-5"; and

WHEREAS, the existing buildings have a total floor area of 50,034 sq. ft. (3.96 FAR); and

WHEREAS, all of the aforementioned buildings, with the exception of the building at 943 Madison Avenue, are considered by the Landmarks Preservation Commission ("LPC") to be contributing buildings to the UESH; and

WHEREAS, the brownstone at 943 Madison Avenue, since it is non-contributing, was approved by LPC to be demolished; and

WHEREAS, on July 25, 2006, under BSA Cal. No. 334-05-BZ, the Board granted a variance (based on a zoning lot that included the Breuer Building) to allow the construction of a nine-story addition to the primary building of the Whitney, that did not comply with zoning parameters concerning street wall, setback, gross area of floors, limiting plane, height above curb level, commercial frontage, and

street trees; and

WHEREAS, the applicant notes that the Whitney subsequently abandoned its plans for the enlargement permitted pursuant to BSA Cal. No. 334-05-BZ; and

WHEREAS, the applicant now proposes to: (1) demolish the existing building at 943 Madison Avenue and replace it with a new five-story element; (2) expand the subcellar level; (3) infill the existing two-story portion of the rear of 933-935 Madison Avenue building, which fronts on East 74<sup>th</sup> Street, to a height of five stories or approximately 56'-0" to match the height of the adjacent 31 East 74<sup>th</sup> Street building; (4) reconfigure the third, fourth, and fifth floors to create residential units on each floor; (5) demolish portions of the rear of the 33 East 74<sup>th</sup> Street building to extend the existing court to the ground level and regularize it at the second floor level; (6) construct a new sixth floor setback 15 feet from Madison Avenue and 15.25 feet from East 74<sup>th</sup> Street; (7) construct a new seventh floor setback 52.46 feet from Madison Avenue and 19.42 feet from East 74<sup>th</sup> Street; (8) construct a new eighth floor setback 52.46 feet from Madison Avenue and 23.59 feet from East 74<sup>th</sup> Street; (9) construct a new mechanical penthouse; and (10) restore the historic facades of the buildings; and

WHEREAS, the applicant states that the proposed building will have a total floor area of 72,214 sq. ft. (5.72 FAR) and a total height of 90'-8" (101'-4" with the mechanical screen wall) (the "Enlarged Building"); and

WHEREAS, the applicant states that the Enlarged Building will consist of retail space at the cellar, first, and second floors of the buildings fronting on Madison Avenue, with 12 residential condominium units throughout the remainder of the building complex; and

WHEREAS, because the Enlarged Building will involve alterations to buildings that are located within, and contribute to, the UESH, the project requires a Certificate of Appropriateness from LPC; and

WHEREAS, the applicant states that the Enlarged Building has numerous non-complying parameters, as detailed below; and

WHEREAS, as to lot coverage, under ZR § 23-145, the maximum permitted lot coverage on an interior lot in an R8B zoning district is 70 percent, and the applicant states that the interior portion of the subject site currently has approximately 100 percent lot coverage and is therefore a pre-existing non-complying condition; and

WHEREAS, the applicant notes that although the lot coverage for the Enlarged Building would be reduced on the first and second floors, it would still be approximately 78 percent; and

WHEREAS, as to FAR, under ZR § 23-145, the maximum permitted floor area within the R8B portion of the site is 10,216 sq. ft. (4.0 FAR), and the applicant proposes a floor area of 12,301 sq. ft. (4.82 FAR) within the R8B portion of the site; and

WHEREAS, the applicant represents that the excess floor area largely results from the need to locate residential use in the cellar of the 33 East 74<sup>th</sup> Street building because

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there is no other feasible use for this cellar space (retail use is not permitted in the R8B district), and since the cellar area (1,999 sq. ft.) will be used for dwelling purposes, it counts as floor area; and

WHEREAS, as to ZR § 23-47, the minimum required rear yard depth for the interior portion of the lot is 30'-0", and the applicant proposes a rear yard for the interior portion of the lot in the R8B district with a minimum depth of 25'-4"; and

WHEREAS, the applicant notes that the existing building does not currently provide a rear yard on the ground floor and has a rear yard of less than 30'-0" on the upper floors, and that the Enlarged Building will reduce this pre-existing non-compliance by providing a 25'-4" rear yard on the first through fifth floors of the existing building and a complying 30'-0" rear yard for the new sixth floor of the 33 East 74<sup>th</sup> Street building; and

WHEREAS, as to ZR § 23-663(b), a minimum setback of 10'-0" from the rear lot line is required in the R8B district for the portion of a building that exceeds 60'-0", and the applicant proposes to continue the non-complying condition in the existing building which exceeds 60'-0", has a non-complying rear yard and does not set back from the required rear yard; further, the enlarged portion of the 33 East 74<sup>th</sup> Street building would be located 30'-0" from the rear lot line and will not provide the required 10'-0" setback; and

WHEREAS, as to ZR § 23-691, the maximum permitted height in the R8B district is 60'-0", and the applicant proposes to construct a one-story addition to the existing non-complying building at 33 East 74<sup>th</sup> Street with a height of 68'-0", thereby increasing the height to 81'-0" and increasing the degree of non-compliance; and

WHEREAS as to ZR § 23-692(c) (the "Sliver Law") and ZR § 99-053, on corner lots the maximum permitted street wall height for a street wall less than 45'-0" in width is 80'-0" (the width of Madison Avenue), and the applicant proposes a street wall facing East 74<sup>th</sup> Street that is approximately 39'-2" in width and that rises to a height of 90'-8"; and

WHEREAS, as to ZR § 23-851, the minimum permitted area for an inner court is 1,200 sq. ft. and the minimum permitted dimension of such court is 30'-0", and the applicant proposes to expand the size of the existing non-complying court on the second floor of the Enlarged Building but maintain its area of approximately 830 sq. ft. and its dimensions of 33'-4" by 25'-4" on the third, fourth and fifth floors; further, although the court in the new floors of the building will have dimensions in excess of 30'-0" by 30'-0", it would not have the required 1,200 sq. ft.; and

WHEREAS, as to ZR § 23-861, the minimum distance between a legally required window and a rear lot line is 30'-0", and the applicant proposes to maintain the existing non-complying rear wall of the 33 East 74<sup>th</sup> Street building with legally required windows located 25'-4" from the rear lot line; and

WHEREAS, as to ZR § 99-051(a), within the UESH, any new construction along the Madison Avenue frontage

and along a side street within 50 feet of its intersection with Madison Avenue must be located on the street line and must rise without setback to a height of at least 97'-8", which is the street wall height of the Breuer Building; and

WHEREAS, the applicant states that in order to comply with the LPC's requirement that all of the contributing buildings be preserved as distinct, functional structures, the Enlarged Building will be set back at least 15'-0" from the Madison Avenue street line and at least 15'-3" from the East 74<sup>th</sup> Street street line; and

WHEREAS, the applicant represents that if the Enlarged Building complied with this street wall requirement, the contributing brownstones would have to be either demolished or reduced to only their facades; and

WHEREAS, as to ZR § 99-052(a), the applicant notes that this section normally requires specified recesses in the Madison Avenue street walls of buildings located within the UESH, in order to create articulation within the mandated street wall envelope; and

WHEREAS, specifically, this section requires that, within the base of the Madison Avenue frontage, above a height of 20 feet or the second story, whichever is less, at least 25 percent of the length of the street wall must be recessed from the street line to a depth of at least five feet; further, above the base, at least 20 percent of the length of the street wall shall be recessed at least five feet; and

WHEREAS, the applicant states that the Enlarged Building does not comply with this provision because the brownstones must be preserved as per LPC, as discussed above, and because such articulation would result in a significant loss of usable space; further, the applicant states that above the Madison Avenue base the Enlarged Building will set back 15'-0" from the Madison Avenue street line and there will be a bay window on the sixth floor, thereby creating a form of building articulation; and

WHEREAS, as to ZR § 99-054(b), the applicant notes that this "Midblock Transition Portion" provision is applicable to the portion of the site located between 70 feet and 100 feet from the Madison Avenue street line, and states that a new development or enlargement shall not penetrate an imaginary plane that begins 70 feet from Madison Avenue at a height of 120 feet above curb level and descends to a height of 77'-8" above curb level at a distance of 100 feet from Madison Avenue; and

WHEREAS, the applicant states that the Enlarged Building does not comply because it sets back 15'-0" from the Madison Avenue street line; thus, the rear portion of the Enlarged Building lies within the Midblock Transition Portion and penetrates the applicable limiting plane; and

WHEREAS, the applicant states that locating the Enlarged Building at the Madison Avenue street line would be inconsistent with LPC's requirement that the enlargement be set back from Madison Avenue so that the contributing rowhouses can be read as distinct structures; and

WHEREAS, finally, as to ZR § 32-422, in C5 districts, Use Group 6 uses may be located only on a story below the lowest story occupied in whole or in part by such dwelling

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units, and the Enlarge Building provides both retail use and residential use on the second floor; and

WHEREAS, the applicant states that the lower floors of the Enlarged Building will operate as two separate buildings, with commercial retail uses on the Madison Avenue frontage and residential use located in the R8B district on the side street, and it would not be practical or permissible to locate commercial retail use in any portion of the 33 East 74<sup>th</sup> Street building, which is partially located in the R8B district; and

WHEREAS, because the proposed building does not comply with all of the bulk and use regulations of the underlying districts, the subject variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: (1) the existing built conditions of the site; and (2) the history of development; and (3) the LPC-imposed requirements regarding the development of the site; and

WHEREAS, the applicant states that the need for the requested variance arises from several factors related to the built condition of the zoning lot and the history of development; and

WHEREAS, the applicant notes that the properties were acquired by the Whitney beginning in 1968, and all of them had been acquired by the Whitney by 1980 except for 33 East 74<sup>th</sup> Street, which was acquired in 1994; and

WHEREAS, the applicant states that the subject buildings were acquired with the intention that they would be incorporated into the museum complex, and over the years most of the buildings have been used by the Whitney for administrative functions, with the ground floors and in some cases the second floor leased for retail uses; and

WHEREAS, the applicant represents that as a result of this history of use and development, the existing structures suffer from a number of functional deficiencies that prevent conversion to residential use in their current form, and conversion to a mix of retail and office uses would not be economically feasible; and

WHEREAS, the applicant states that structural changes made to the 31 East 74<sup>th</sup> Street and 33 East 74<sup>th</sup> Street buildings to facilitate the connection with and use by the Whitney pose an additional burden on a potential residential conversion; and

WHEREAS, specifically, the applicant states that the 31 East 74<sup>th</sup> Street building was converted to a circulation core that established a physical connection between the Breuer Building and the 33 East 74<sup>th</sup> Street building; and

WHEREAS, the applicant further states that in the 33 East 74<sup>th</sup> Street building the Whitney constructed a two-story library in the building's rear yard and added an additional floor to the rear, and these changes required extensive alterations to the rear of the 33 East 74<sup>th</sup> Street building; and

WHEREAS, the applicant notes that the site is also located within the UESH, and that LPC has determined

that all but one of the buildings on the site are contributing buildings to the historic district; therefore, any proposal to enlarge the site for residential use would require a Certificate of Appropriateness and would have to preserve major portions of these contributing buildings and create a cohesive ensemble that is appropriate to the surrounding context of the UESH; and

WHEREAS, the applicant represents that in order to cure the non-compliances on the site related to the rear yard, inner court, and window-to-lot-line conditions, substantial alterations would be required to the rear wall of the 33 East 74<sup>th</sup> Street building, and those alterations would not be permitted by LPC because of the existing historic rear façade of that building; and

WHEREAS, the applicant further represents that these historic conditions are also in conflict with the building envelope mandated under the Special District regulations; and

WHEREAS, the applicant notes that the Special District regulations were adopted in 1973, almost 100 years after the subject Madison Avenue rowhouses were built and prior to the designation of the UESH; and

WHEREAS, the applicant states that the prevailing form that the Special District regulations mandate is essentially a tall apartment building, with ground floor retail uses, built to the Madison Avenue street line, with a required street wall of between 110 and 120 feet, or, within a historic district, a street wall that at least matches the height and location of an adjacent building, and a maximum overall height of 210 feet; and

WHEREAS, the applicant represents that any enlargement that complied with the aforementioned street wall requirements would have dominated and obscured the subject rowhouses, and such an enlargement would, therefore, have been inconsistent with LPC's mandate that any enlargement retain and be respectful of the contributing rowhouses as distinct structures; accordingly, constructing the proposed enlargement set back from the rowhouses satisfies the conditions imposed by LPC, but results in non-compliance with the street wall and Midblock Transition Portion requirements of the Special District regulations; and

WHEREAS, the applicant states that all of the requested waivers are directly tied to either the pre-existing condition of the buildings (regarding lot coverage, rear yard, inner court, and legal window regulations), the conflicts between the Special District regulations and the requirements of LPC (regarding streetwall location and recess regulations), the need to develop the buildings as a single complex within the confines of the existing structures and the split lot condition (regarding the supplementary use regulations), or the need to maximize the floor area of the building in a way that would be consistent with the requirements of LPC (regarding the Sliver Law, R8B floor area, R8B/LH-1A height, rear setback, and recess regulations); and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary

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hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations, due to the combination of the existing built conditions, the history of development of the site, and the LPC-imposed requirements regarding the development of the site; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) a complying development consisting of retail uses at the cellar, first, and second floors of the Madison Avenue buildings with office space above, and community facility office use throughout the five-story East 74<sup>th</sup> Street buildings, with a total floor area of 58,188 sq. ft. (4.61 FAR); (2) a lesser variance scenario, which incorporates all of the elements proposed for the Enlarged Building, except for the addition of a sixth floor in the R8B portion of the zoning lot, resulting in the loss of 1,135 sq. ft. residential floor area; and (3) the proposed building, with

retail space at the cellar, first, and second floors of the buildings fronting on Madison Avenue, and 12 residential condominium units throughout the remainder of the eight-story building complex; and

WHEREAS, the study concluded that neither the complying development nor the lesser variance scenario would result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the applicant represents that the variances, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding neighborhood contains a mix of residential, retail, and institutional uses, with Madison Avenue in this area predominantly occupied by both large and small residential buildings with ground floors, and frequently the first two floors, devoted to boutiques, galleries, restaurants, and spas; and

WHEREAS, the applicant notes that the size of the buildings in the immediate vicinity of the site are varied, ranging from one and two story carriage houses to high-rise residential buildings; and

WHEREAS, the building directly to the west of the Breuer Building, at 14 East 75<sup>th</sup> Street, is an 11-story building with a height of 166 feet, while the building directly to the north, at 35 East 75<sup>th</sup> Street, is a 16-story building with a height of 192 feet; and

WHEREAS, the building located southwest of the site, at Madison Avenue and East 74<sup>th</sup> Street is a 15-story apartment building with a height of 192 feet, while the 40-story Carlyle Hotel with a height of 394 feet lies one block to the north, at Madison Avenue and East 76<sup>th</sup> Street; and

WHEREAS, further, the easterly end of the block on which the zoning lot is located contains a 14-story and a 19-story residential building; and

WHEREAS, the applicant notes that with the Enlarged Building, the zoning lot would contain only 72,214 sq. ft. (5.72 FAR) of floor area, which is significantly less than the

110,886 sq. ft. of floor area (8.79 FAR) permitted on the zoning lot; and

WHEREAS, as noted above, because the Enlarged Building will involve alterations to buildings that are located within, and contribute to, the UESH, the project requires a Certificate of Appropriateness from LPC; and

WHEREAS, the applicant states that the Enlarged Building will have eight stories and rise to a height of 90'-8" (101'-4" with the mechanical screen wall), and will be comparable in height with a number of surrounding buildings, and will be significantly lower than the maximum height of 210 feet for new development within the Special District; and

WHEREAS, the applicant further states that the infill portion of the Enlarged Building will reinforce the streetwall on East 74<sup>th</sup> Street and the new construction at the sixth, seventh, and eighth floors is set back a respectful distance from the other building elements, and this massing will be consistent with the built context of the surrounding neighborhood because many of the taller buildings within this area are located in the mid-blocks rather than along the major avenues; and

WHEREAS, specifically, the applicant states that within the UESH, which runs along both sides of Madison Avenue from East 61<sup>st</sup> Street to East 77<sup>th</sup> Street, 15 buildings of 13 stories or more are located mid-block, immediately east and west of Madison Avenue; and

WHEREAS, the applicant further states that two large mid-block apartment buildings located near the zoning lot – the 15-story building at 23 East 74<sup>th</sup> Street and the 16-story building at 20 East 76<sup>th</sup> Street – offer a Madison Avenue perspective very similar to the Enlarged Building in that they sit directly behind low-rise commercial buildings that front on Madison Avenue; and

WHEREAS, the applicant represents that the Enlarged Building will produce a sensitive composition of varied but respectful elements, which will allow all of the contributing buildings to be read as separate components, and this composition will be consistent with the irregular Madison Avenue skyline that prevails in the UESH, which has evolved over time into a neighborhood with buildings that vary greatly in age, style, and size; and

WHEREAS, accordingly, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from LPC approving work associated with the proposed enlargement, dated October 2, 2012; and

WHEREAS, the applicant notes that LPC issued the Certificate of Appropriateness in recognition of the fact that the Enlarged Building would be compatible with the built conditions in the UESH, in terms of height and in terms of its relation to the smaller brownstones; and

WHEREAS, the Board agrees that the Certificate of Appropriateness, while not dispositive, is highly relevant evidence in support of the conclusion that the proposed development on the site comports with the essential

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character of the community; and

WHEREAS, finally, the applicant notes that the Environmental Assessment Statement prepared for this application demonstrates that the Enlarged Building will not produce excessive vehicular or pedestrian traffic in the surrounding area or any other negative community impacts; and

WHEREAS, based upon the above, the Board finds that the subject variances, if granted will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property or be detrimental to the public welfare; and

WHEREAS, as to the self-created hardship finding, the applicant states that the practical difficulty and unnecessary hardship that necessitate this application result from the physical constraints of the multiple buildings that constitute the site; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the applicant or a predecessor in title; and

WHEREAS, as to minimum variance, the Board notes that the applicant investigated both a complying development and a lesser variance scenario for the site, but determined that neither of these alternatives were financially feasible; and

WHEREAS, as noted above, the applicant states that all of the requested waivers are directly tied to either the pre-existing condition of the buildings (regarding lot coverage, rear yard, inner court, and legal window regulations), the conflicts between the Special District regulations and the requirements of LPC (regarding streetwall location and recess regulations), the need to develop the buildings as a single complex within the confines of the existing structures and the split lot condition (regarding the supplementary use regulations), or the need to maximize the floor area of the building in a way that would be consistent with the requirements of LPC (regarding the Sliver Law, R8B floor area, R8B/LH-1A height, rear setback, and recess regulations); and

WHEREAS, the applicant notes that the height of the Enlarged Building falls well below the applicable overall height limit of 210 feet and is also well below the height of a number of nearby buildings, and the Enlarged Building will have a total floor area of 72,214 sq. ft. (5.72 FAR) which is significantly less than the 110,836 sq. ft. of floor area (8.79 FAR) permitted on the site; and

WHEREAS, accordingly, the Board finds that the requested waivers represent the minimum variance necessary to afford relief; and

WHEREAS, accordingly, based upon its review of the record and its site visit, the Board finds that the applicant has provided sufficient evidence in support of each of the findings required for the requested variance; and

WHEREAS, the project is classified as a Type I action pursuant to Sections and 617.12 and 617.4 of 6NYCRR; and

WHEREAS, the Board has conducted an

environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA146M, dated October 12, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the applicant's 2012 noise assessment and determined that the proposed project's inclusion of 23 dBA noise attenuation for the ground floor retail space using standard double-glazed windows is not anticipated to result in significant noise impacts; and

WHEREAS, in connection with the CEQR review in 2006 of the then proposed expansion of the Whitney Museum on the subject property, a Restrictive Declaration ("RD") relating to the potential for hazardous materials was recorded against the subject property; and

WHEREAS, the RD stated that if hazardous materials were identified, a Remedial Action Plan and Health and Safety Plan would need to be submitted to DEP for review and approval; and

WHEREAS, the Mayor's Office for Environmental Remediation ("OER") is responsible for administering the RD, and the applicant has been meeting with OER on the proposed project; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C5-1 zoning district and the Special Madison Avenue Preservation District and partially within an R8B(LH-1A) district, and within the UESH, the proposed enlargement of an existing complex of buildings, that does not comply with zoning parameters concerning lot coverage, FAR, rear yard, height and setback, inner courts, minimum distance between legally required windows and the rear lot line, required recesses in the Madison Avenue street wall, and location of commercial use, contrary to ZR

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§§ 23-145, 23-147, 23-663(b), 23-691, 23-692(c), 99-053, 23-851, 23-861, 99-051(a), 99-052(a), 99-054(b), and 32-422 *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 17, 2012" – seventeen (17) sheets; and *on further condition*:

THAT the building parameters will be as illustrated on the BSA-approved plans;

THAT construction will proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 202-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1030 Southern Boulevard Realty Associates, owner; Blink Southern Boulevard, Inc., lessee.

SUBJECT – Application June 26, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building and special permit (§73-52) to permit the 25'-0" extension of the physical culture establishment use into a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1030 Southern Boulevard, east side of Southern Boulevard, 264' south of intersection of Westchester Avenue and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

## COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Application withdrawn.

**THE VOTE TO WITHDRAW** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

Adopted by the Board of Standards and Appeals, October 23, 2012.

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## 147-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

## COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.

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## 185-11-BZ

APPLICANT – Eric Palatnik, P.C., for 2000 Stillwell Avenue, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to permit parking accessory to an adjacent, as-of-right retail development (*Walgreens*), contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 2538 85<sup>th</sup> Street, north intersection of 86<sup>th</sup> Street and Stilwell Avenue. Block 6860, Lot 21. Borough of Brooklyn.

## COMMUNITY BOARD #11BK

**THE VOTE TO CLOSE HEARING** –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for decision, hearing closed.

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## 30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

## COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for continued hearing.

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## 63-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27<sup>th</sup> Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

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## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.  
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## 72-12-BZ

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

## COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.  
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## 73-12-BZ

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41<sup>st</sup> Avenue and 42<sup>nd</sup> Avenue, Block 6290, Lot 5, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for continued hearing.  
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## 82-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2011 East 22<sup>nd</sup> Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.  
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## 150-12-BZ

APPLICANT – Goldman Harris LLC, for Roseland/Stempel 21st Street, owner; TriCera Revolution, Inc., lessee.

SUBJECT – Application May 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Flywheel Sports*). C6-4A zoning district.

PREMISES AFFECTED – 39 West 21<sup>st</sup> Street, north side of West 21<sup>st</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues. Block 823, Lot 17. Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for continued hearing.  
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## 152-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65' southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

## COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.  
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## 165-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sarah Weinberger and Moshe Weinberger, owner.

SUBJECT – Application June 4, 2012 – Special Permit (§73-622) for the enlargement and partial legalization of an existing single family home contrary to floor area and open space (§23-141) and rear yard (§23-47) regulations; R2 zoning district.

PREMISES AFFECTED – 1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M. Block 7640, Lot 82. Borough of Brooklyn.

## COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 27, 2012, at 1:30 P.M., for decision, hearing closed.  
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## 189-12-BZ

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to November 20, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## \*CORRECTION

This resolution adopted on October 16, 2012, under Calendar No. 2-12-BZ and printed in Volume 97, Bulletin Nos. 41-42, is hereby corrected to read as follows:

## 2-12-BZ

### CEQR #12-BSA-058Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Tehjila Development, LLC, owner.

SUBJECT – Application January 3, 2012 – Variance (§72-21) for the construction of a three-story, two-family dwelling, contrary to side yard requirement (§23-48); less than the required number of parking spaces (§25-21) and location of one parking space within the front yard (§23-44). R5 zoning district.

PREMISES AFFECTED – 95-36 115<sup>th</sup> Street, 335.29' south of intersection of 95<sup>th</sup> Avenue and 115<sup>th</sup> Street, Block 9416, Lot 24, Borough of Queens.

### COMMUNITY BOARD #9Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 20, 2012, acting on Department of Buildings Application No. 420283375, reads in pertinent part:

Proposed 3 feet side yards is contrary to ZR 23-48. The required side yards as per said section is 5 feet. Proposed number of parking spaces is contrary to ZR 25-21. The required number of parking spaces as per said section is two (2) and the proposed number of spaces is none (0); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the proposed construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; and

WHEREAS, a public hearing was held on this application on August 7, 2012 after due notice by publication in *The City Record*, with a continued hearing on September 11, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 9, Queens, recommends disapproval of this application, citing concerns that the proposed home would compromise the light and air of adjacent homes, and that the hardship is self-created; and

WHEREAS, New York City Council Member Ruben Wills recommends disapproval of this application, citing concerns with its effect on the character of the neighborhood;



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and

WHEREAS, the site is located on the west side of 115<sup>th</sup> Street between 95<sup>th</sup> Avenue and 101<sup>st</sup> Avenue, within an R5 zoning district; and

WHEREAS, the site has a width of approximately 20 feet, a depth of 92 feet, and a total lot area of 1,842 sq. ft.; and

WHEREAS, the site is currently occupied by a single-story storage structure; and

WHEREAS, the applicant proposes to demolish the existing structure and construct a three-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: a floor area of 2,184 sq. ft. (1.19 FAR); a lot coverage of 39.5 percent; a front yard with a depth of 10'-0"; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; and a total height of 31'-7"; and

WHEREAS, however, the applicant proposes two side yards with a width of 3'-0" each (two side yards with a minimum width of 5'-0" each are required); and no parking spaces (two parking spaces are the minimum required); and

WHEREAS, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home in order to make it more compatible with the heights of surrounding homes, and removed the parking space from the front yard, thereby removing the non-compliance related to the location of the parking space; and

WHEREAS, the applicant notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a two-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of application for a building permit; and

WHEREAS, in support of this assertion, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the three adjoining lots; and

WHEREAS, the applicant states that side yard and parking relief is necessary, for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject lot; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site

requires side yards with widths of 5'-0" each and that the building would have a maximum exterior width of 10'-0" and constrained floor plates if side yard regulations were complied with fully; and

WHEREAS, the applicant states that the narrowness of the lot also precludes locating parking spaces within a side yard without creating a home with a severely constrained width; and

WHEREAS, accordingly, the applicant represents that the side yard and parking waivers are necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted land use maps of the surrounding area which reflects that there are only three vacant interior residential lots in the surrounding area, two of which have widths significantly larger than the subject site (with widths of 30 feet and 41 feet, respectively); and

WHEREAS, the applicant states that there is only one other vacant lot in the surrounding area with a width of only 20 feet, and that lot is occupied by a partially constructed structure that is an apparent enlargement or alteration to the adjacent home to the south; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the surrounding area is characterized by residential uses; and

WHEREAS, the applicant states that neither of the adjacent homes comply with applicable side yard regulations, as they each have minimal side yards; and

WHEREAS, the applicant submitted a parking study which shows that the number of street parking spaces available in the vicinity of the site ranges from an average of 40 at 1:00 p.m. to an average of 22 at 6:00 p.m.; and

WHEREAS, the applicant states that the availability of street parking demonstrates that the lack of parking at the proposed home will not impact the surrounding area; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, as to the Community Board's concern that the applicant's hardship was created by the purchase of the subject lot, which requires the requested variance to build a habitable home, the Board notes that ZR § 72-21(d) specifically provides that the purchase of a zoning lot subject to the restriction sought to be varied is not a self-created hardship; and

WHEREAS, accordingly, the Board finds that the

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hardship herein was not created by the owner or a predecessor in title, but is rather a result of the lot's pre-existing narrow width; and

WHEREAS, as noted above, the applicant originally proposed to construct a three-story two-family home with a wall height of 29'-10", a total height of 33'-5", and which provided one parking space located in the front yard, resulting in an additional non-compliance with the location of a parking space in the front yard; and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to reduce the height of the home and remove the parking space from the front yard, thereby making the home more compatible with the surrounding neighborhood and removing the non-compliance related to the location of the parking space; and

WHEREAS, accordingly the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district, construction of a three-story two-family home that does not comply with the zoning requirements for side yards and parking spaces, contrary to ZR §§ 23-48 and 25-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 30, 2012"-(10) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 2,184 sq. ft. (1.19 FAR); a front yard with a depth of 10'-0"; a side yard with a width of 3'-0" along the northern lot line; a side yard with a width of 3'-0" along the southern lot line; a rear yard with a depth of 30'-0"; a wall height of 28'-7"; a total height of 31'-7"; and no parking spaces, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,

October 16, 2012.

**\*The resolution has been revised to correct the number of Approved Plans which read "Received August 30, 2012"-(30) sheets now reads "Received August 30, 2012"-(10) sheets. Corrected in Bulletin No. 44, Vol. 97, dated October 31, 2012.**

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## \*CORRECTION

This resolution adopted on October 16, 2012, under Calendar No. 305-85-BZ and printed in Volume 97, Bulletin Nos. 41-43, is hereby corrected to read as follows:

### 301-85-BZ

APPLICANT – Francis R. Angelino, Esq. for 58 East 86<sup>th</sup> Street, LLC, owner.

SUBJECT – Application May 8, 2012 – Amendment of a variance (§72-21) which permitted limited retail use in the ground floor and cellar retail within a five story and penthouse residential building. The amendment seeks to expand the uses conditioned by the Board to include other retail (UG 6) uses. R10 (PI) zoning district.

PREMISES AFFECTED – 58 East 86<sup>th</sup> Street, south side, 113' East of Madison Avenue and Park Avenues. Block 1497, Lot 49. Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance to permit certain retail uses (Use Group 6) at the first floor of a six-story (including penthouse) building within a residential zoning district; and

WHEREAS, a public hearing was held on this application on July 24, 2012 after due notice by publication in the *City Record*, with a continued hearing on August 21, 2012, and then to decision on October 16, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, representatives of Carnegie Hill Neighbors and certain members of the community provided testimony in opposition to this application (hereinafter, the "Opposition"), raising the primary concern that the proposed expansion of the permissible Use Group 6 uses at the site would be detrimental to the surrounding neighborhood character; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, the site is located on the south side of East 86<sup>th</sup> Street between Madison Avenue and Park Avenue, in an R10 zoning district within the Special Park Improvement District; and

WHEREAS, the site is occupied by a six-story (including penthouse) mixed-use building with ground floor

retail use and with residential use above; and

WHEREAS, on February 11, 1986, under the subject calendar number, the Board granted a variance to permit the ground floor of the subject building to be occupied by certain retail uses (Use Group 6) limited to the following: a beauty parlor, art gallery, or clothing store; and

WHEREAS, subsequently, the grant has been amended and the term extended on various occasions; and

WHEREAS, most recently, on August 22, 2006, Board granted a 15-year extension of term, to expire on February 11, 2021; and

WHEREAS, the applicant now requests an amendment to permit: (1) the expansion of the uses permitted to occupy the ground floor to include a bank, drug store, optician, a sporting goods store, and a bicycle sales, rental or repair shop; and (2) an expansion of the permitted days of operation from Monday through Saturday to seven days per week; and

WHEREAS, the applicant states that the ground floor of the subject building was leased to a beauty parlor on September 1, 1986, and that this business has occupied the site continuously since that time; and

WHEREAS, the applicant submitted a letter from the owner of the building stating that the current tenant (the beauty parlor) may choose not to renew its lease, in which case the limitation of the permitted Use Group 6 uses to beauty parlor, art gallery, and clothing store would be detrimental to renting the space; and

WHEREAS, the applicant further states that the ground floor of the subject building has been occupied by a commercial use since before the enactment of the 1916 Zoning Resolution, and that the building is located only 13 feet east of a C5-1 zoning district; and

WHEREAS, the applicant represents that the requested additional Use Group 6 uses were selected based on consultations with real estate brokers concerning other possible retail uses that would be similarly compatible with the neighborhood as the existing beauty parlor has been; and

WHEREAS, as to the request to expand the permitted days of operation from six to seven, the applicant states that the ground floor retail space is currently permitted to operate Monday through Saturday, from 8:00 a.m. to 9:00 p.m., and that it now seeks to also operate on Sundays, from 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant submitted a table reflecting all of the commercial uses on East 86<sup>th</sup> Street between Fifth Avenue and Lexington Avenue and their days and hours of operation, which reflects that most stores are open from approximately 11:00 a.m. to 6:00 p.m. on Sundays; accordingly, the proposed hours of operation would be consistent with other commercial stores in the area; and

WHEREAS, the Opposition contends that the proposed expansion of the permitted Use Group 6 uses at the site would have a negative impact on the surrounding neighborhood character; and

WHEREAS, specifically, the Opposition argues that the mid-block portion of the subject block is distinctly residential in character and that the subject site is the only commercial

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presence on the subject block within the R10 district; and

WHEREAS, the Opposition states that, while it does not object to the request to permit Sunday hours at the site or to expand the permitted uses on the site to include an optician, the impact of increased commercial traffic, increased lighting, or increased utilization of display windows that could result from the other uses proposed by the applicant would have a detrimental impact on the residential character of the area; and

WHEREAS, in response to the concerns raised by the Opposition, the applicant revised its proposal to remove the requested bicycle sales, rental, or repair shop from the requested uses on the site; and

WHEREAS, the Opposition expressed additional concerns that a bank use at the site would present after-hours security issues on the block, and a drug store use could result in "mission creep" whereby drug stores expand their sales to convenience items and food, including prepared take-out items such as sandwiches; and

WHEREAS, the Board finds that, given the security concerns raised by the Opposition, the retail uses permitted on the ground floor should not be expanded to include the proposed bank use, which the applicant indicates would include ATM use on the interior of the bank accessible by cardholders after hours; and

WHEREAS, however, the Board finds that the optician, sporting goods store, and drug store uses proposed by the applicant would not negatively impact the surrounding area, particularly given the multitude of commercial uses in the vicinity of the site and the small footprint of the subject building which limits the types of drug stores and sporting goods stores that can make use of the site; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated February 11, 1986, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received May 8, 2012'-(3) sheets; and *on further condition*:

THAT the term of this grant will expire on February 11, 2021;

THAT the uses on the first floor will be limited to beauty parlor, art gallery, clothing store, drug store, optician, and sporting goods store (not including bicycle sales, rental, or repair);

THAT the hours of operation will be limited to: Monday through Saturday, from 8:00 a.m. to 9:00 p.m.; and Sunday, from 11:00 a.m. to 6:00 p.m.;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions will be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (Alt. 121027405)

Adopted by the Board of Standards and Appeals, October 16, 2012.

**\*The resolution has been revised to correct the hours of operation which read: ... "9:00 a.m. to 8:00 p.m.".... now reads: ... "8:00 a.m. to 9:00 p.m.".... Corrected in Bulletin No. 44, Vol. 97, dated October 31, 2012.**

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 97, No. 45

November 7, 2012

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### DIRECTORY

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**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

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**Thursday, November 15, 2012**

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30-58-BZ	184-17 Horace Harding Expressway, Queens
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241-12-BZ	8-12 Bond Street, aka 358-364 Lafayette Street, Manhattan

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# DOCKET

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New Case Filed Up to November 15, 2012  
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**303-12-BZ**

1106-1108 Utica Avenue, Utica Avenue between Beverly Road and Clarendon Road., Block 4760, Lot(s) 15, Borough of **Brooklyn, Community Board: 17**. Variance (72-21) to permit the development of a sub-cellar, cellar and three story Church, with accessory religious based educational and social facilities, contrary to rear yard setback, sky exposure plane (slope), and wall height. C8-1 district.  
-----

**304-12-A**

42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot(s) 59, Borough of **Queens, Community Board: 7**. Proposed seven-story residential development located within the mapped but unbuilt portion of Ash Avenue, pursuant to Section 35 of the General City Law. R6A district.  
-----

**305-12-A**

5 Point Crescent, west of the intersection of Point Crescent and Boulevard, Block 4416, Lot(s) 12, Borough of **Queens, Community Board: 7**. Proposed renovation of a single family dwelling located in the bed of a mapped street is contrary to General City Law§35. R1-2 district.  
-----

**306-12-BZ**

2955 Veterans Road West, Cross Streets Tyrellan Avenue and W Shore Expressway, Block 7511, Lot(s) 1, Borough of **Staten Island, Community Board: 3**. Special permit (73-36) to allow the proposed physical culture establishment in an M1-1 zoning district. M1-1/SRD district.  
-----

**307-12-A**

25 Olive Walk, east side of Olive Walk, 140' north of Breezy Point Boulevard, Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of existing single family dwelling not fronting a mapped street is contrary to Article 3, section 36 of the General City law. The proposed upgrade of the existing non-conforming private disposal system located partially in the bed of the service road is contrary to building department policy. R4 district.  
-----

**308-12-A**

39-27 29th Street, east side of 29th Street, between 39th and 40th Avenues, Block 399, Lot(s) 9, Borough of **Queens, Community Board: 1**. #Deleted M1-2/R5D district.  
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**309-12-BZY**

232 Skillman Street, west side of Skillman Street between Willoughby Avenue and Dekalb Avenue., Block 1927, Lot(s) 60, Borough of **Brooklyn, Community Board: 3**. R6B district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**NOVEMBER 27, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 27, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **743-59-BZ**

**APPLICANT** – Peter Hirshman for VM 30 Park, LLC, owner.

**SUBJECT** – Application June 14, 2012 – Extension of Term of a previously approved variance, granted pursuant to Section 7e of the 1916 zoning resolution and Section 60 (1d) of the Multiple Dwelling Law, which permitted attended transient parking limited to twenty (20) unused or surplus spaces, which expired on June 14, 2011; Waiver of the Rules. R10 & R9x zoning district.

**PREMISES AFFECTED** – 30 Park Avenue, southwest corner of East 36<sup>th</sup> Street and Park Avenue. Block 865, Lot 40. Borough of Manhattan.

**COMMUNITY BOARD #6M**

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## **APPEALS CALENDAR**

### **85-12-A**

**APPLICANT** – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communication LLC.

**OWNER OF PREMISES** - G.A.L. Manufacturing Company  
**SUBJECT** – Application April 6, 2012 –Appeal from determination of Bronx Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-1 Zoning District

**PREMISES AFFECTED** – 50 East 153<sup>rd</sup> Street, bounded by Metro North and the Metro North Station; an off ramp to the Major Deegan Expressway, E. 157<sup>th</sup> Street, E. 153<sup>rd</sup> Street and the Bronx Terminal Market, Block 2539, Lot 132, Borough of Bronx.

**COMMUNITY BOARD #4BX**

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### **90-12-A**

**APPLICANT** – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

**OWNER OF PREMISES** – Robal Arlington Corporation.  
**SUBJECT** – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of the Department of Buildings regarding right to maintain existing advertising sign in manufacturing district.

**PREMISES AFFECTED** – 111 Varick Street, between

Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

**NOVEMBER 27, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, November 27, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **106-12-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.

**SUBJECT** – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story Use Group 6 retail store contrary to rear yard §33-292. C8-3 zoning district.

**PREMISES AFFECTED** – 2102 Jerome Avenue between East Burnside Avenue and East 181<sup>st</sup> Street, Block 3179, Lot 20, Borough of Bronx.

**COMMUNITY BOARD #5BX**

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### **156-12-BZ**

**APPLICANT** – Sheldon Lobel, for Prospect Equities Operation, LLC, owner.

**SUBJECT** – Application May 17, 2012 – Variance (§72-21) to permit construction of a mixed-use affordable housing building with ground floor commercial use contrary to §23-851 (minimum inner court dimensions). C1-4/R7A zoning district.

**PREMISES AFFECTED** – 816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot 90, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

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### **195-12-BZ**

**APPLICANT** – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

**SUBJECT** – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance, permitting the construction of a two story office building (UG6) with parking spaces for four cars in a residence use district, which expired on May 13, 2000. Waiver of the Rules of Practice and Procedure. R4 zoning district.

**PREMISES AFFECTED** – 108-15 Crossbay Boulevard, between 108<sup>th</sup> and 109<sup>th</sup> Avenues. Block 9165, Lot 291.



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# CALENDAR

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Borough of Queens.

**COMMUNITY BOARD #10Q**

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**260-12-BZ**

APPLICANT – John M. Marmora, Esq., c/o K & L Gates LLP, for McDonald's Corporation, owner.

SUBJECT – Application – Special Permit (§73-243) to permit an accessory drive-through facility to an eating and drinking establishment (*McDonald's*) within the portion of the lot located in a C1-3/R5D zoning district contrary to §§32-15 & 32-32 as well as a Special Permit (§73-52) to extend the commercial use by 25' into the R3A portion of the lot contrary to § 22-10.

PREMISES AFFECTED – 114-01 Sutphin Boulevard, north side of Sutphin Boulevard between Linden Boulevard and 114<sup>th</sup> Road, Block 12184, Lot 7, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**276-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 833 Flatbush, LLC c/o Jem Realty, owner; Blink 833 Flatbush Avenue Inc., lessee.

SUBJECT – Application September 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink*) within portions of existing commercial building in a C2-4 zoning district.

PREMISES AFFECTED – 833/45 Flatbush Avenue, aka 2/12 Linden Boulevard, northeast corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot 8, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**278-12-BZ**

APPLICANT – John M. Marmora, Esq. for Robert J. Panzarella, BSB Real Estate Holdings LLC. J & J Real Estate Holdings LLC., owner, McDonald's USA, LLC, lessee.

SUBJECT – Application September 18, 2012 – Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district to permit the development of a proposed eating and drinking establishment (McDonald's) with accessory drive thru. C8-2 and R5 zoning district.

PREMISES AFFECTED – 3143 Atlantic Avenue, northwest corner of Atlantic Avenue between Hale Avenue and Norwood Avenue. Block 3960, Lot 58. Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING THURSDAY MORNING, NOVEMBER 15, 2012 10:00 A.M.

Present: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

Absent: Vice Chair Collins.

### SPECIAL ORDER CALENDAR

#### 134-06-BZ

APPLICANT – Akerman Senterfill, LLP, for 241-15 Northern LLC, owner.

SUBJECT – Application August 13, 2012 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) which permitted the construction of a five-story residential building containing 40 dwelling units and 63 accessory parking spaces which expires on September 9, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-15 Northern Boulevard, Northwest corner of the intersection between Northern Boulevard and Douglaston Parkway. Block 8092, Lot 39, Borough of Queens.

#### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of a three-story residential building, which expired on September 8, 2012; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Daniel J. Halloran, III recommends approval of this application; and

WHEREAS, the subject site is located at the northwest corner of Northern Boulevard and Douglaston Parkway, within an R1-2 zoning district; and

WHEREAS, on September 8, 2008, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story residential building with 24 dwelling units and 34 accessory parking spaces (with

three additional reservoir spaces), contrary to the underlying zoning district regulations for use, floor area ratio, open space, front yard, rear yard, height and setback, and number of dwelling units; and

WHEREAS, substantial construction was to be completed by September 8, 2012, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner has now obtained the necessary financing to begin the project; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 8, 2008, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on November 15, 2016; *on condition*:

THAT substantial construction will be completed by November 15, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402387449)

Adopted by the Board of Standards and Appeals, November 15, 2012.

#### 30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP for Maximum Properties, Inc., owner; Joseph Macchia, lessee.

SUBJECT – Application July 10, 2012 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2004; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, north west corner of 185<sup>th</sup> Street. Block 7067, Lot 50, Borough of Queens.

#### COMMUNITY BOARD #11Q

#### APPEARANCES –

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

# MINUTES

## 39-65-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.

SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

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## 548-69-BZ

APPLICANT – Eric Palatnik, P.C., for BP North America, owner.

SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district

PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107<sup>th</sup> Street, Block 1694, Lot 1, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

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## 311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Crospey Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

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## 95-90-BZ

APPLICANT – Akerman Senterfitt, LLP, for Bell Realty, owner; CVS Pharmacy, lessee.

SUBJECT – Application July 26, 2012 – Extension of Term of an approved variance (§72-21) which permitted retail (UG 6) with accessory parking for 28 vehicles which expired on January 28, 2012. R1-2 zoning district.

PREMISES AFFECTED – 242-24 Northern Boulevard, bounded by Northern Boulevard north of Douglaston Parkway, west and 243<sup>rd</sup> Street to the east, Block 8179, Lot 1, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

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## 271-90-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

### COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

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## 67-91-BZ

APPLICANT – Sheldon Lobel, P.C., for H.N.F. Realty, LLC, owner; Cumberland Farms, Inc. lessee.

SUBJECT – Application July 27, 2012 – Extension of Term (§11-411) of an approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on March 17, 2012; Waiver of the Rules. C1-2 zoning district.

PREMISES AFFECTED – 260-09 Nassau Boulevard, north corner of intersection formed by Little Neck Parkway and Nassau Boulevard, Block 8274, Lot 135, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

# MINUTES

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

## 68-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.

SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M. for continued hearing.

## 314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 437-51 West 13<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 12, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a 12-story commercial office and retail building, which will expire on November 24, 2013; waiver of the Rules. M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13<sup>th</sup> Street, southeast portion of block bounded by West 13<sup>th</sup>, West 14<sup>th</sup> and Washington Streets and Tenth Avenue, Block 646, Lot 19, 20, Borough of Manhattan.

## COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 194-12-A

APPLICANT – John Sullivan, for Gelu-Durius Musica, owner.

SUBJECT – Application June 15, 2012 – Appeal challenging the Department of Buildings' determination that the proposed nursery school complies with ZR §24-11. R2A Zoning District.

PREMISES AFFECTED – 213-14 Union Turnpike, south side of Union Turnpike at corner of 214<sup>th</sup> Street, Block 7787, Lot 44, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: .....0  
Negative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the Queens Borough Commissioner of the Department of Buildings (“DOB”), dated May 15, 2012, to uphold the approval of New Building Permit No. 420321538-01-NB (the “Permit”), for the construction of a community facility building at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

The proposed Nursery school (Use Group 3) on a R2A corner lot complies with the lot coverage of 60%.

As per ZR 11-25, all regulations applicable to a district designation shall be applicable to such district designation appended with a suffix, except as otherwise set forth in express provisions of the Zoning Resolution.

Therefore, the ‘R2’ district regulation in ZR 24-11 will be applicable to the ‘R2A’ district; and

WHEREAS a public hearing was held on this application on September 11, 2012 after due notice by publication in *The City Record*, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commission Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of Union Turnpike between 213<sup>th</sup> Street and 214<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the subject appeal concerns whether the subject community facility building complies with the provisions of the underlying R2A zoning district; and

WHEREAS, this appeal is brought on behalf of the owner of 80-03 214<sup>th</sup> Street (the “Appellant”); and

WHEREAS, DOB has been represented by counsel throughout this appeal; and

# MINUTES

## PROCEDURAL HISTORY

WHEREAS, on March 29, 2012, DOB issued the Permit to construct the subject community facility building (Use Group 3) on a corner lot within an R2A zoning district; and

WHEREAS, subsequently, the Appellant filed a zoning challenge with DOB claiming that the proposed building does not comply with the lot coverage requirements for residential buildings in R2A zoning districts under ZR § 23-141, and that the floor area of the building was miscalculated because the plans show a basement and the square footage of the basement was not included in the floor area calculation; and

WHEREAS, on April 20, 2012, the DOB Queens Borough Commissioner issued a “ZRD2: Zoning Challenge with Response” stating that the proposed community facility building complies with the 60 percent lot coverage requirement for community facility buildings under ZR § 24-111, and that the lowest level of the building meets the ZR § 12-10 definition of cellar, and is therefore not counted as part of the zoning floor area; and

WHEREAS, subsequently, the Appellant appealed the April 20, 2012 determination and claimed that ZR §§ 24-111 and 24-011 apply only to R2 zoning districts and not to R2A zoning districts; and

WHEREAS, in response, on May 15, 2012, DOB issued the Final Determination; on June 15, 2012 the Appellant filed the subject appeal at the Board; and

## RELEVANT ZONING RESOLUTION PROVISIONS

### ZR § 11-25 District Designations Appended with Suffixes

All regulations applicable to a district designation shall be applicable to such district designation appended with a suffix, except as otherwise set forth in express provisions of this Resolution. If a section lists an R4 District, therefore, the provisions of that section shall also apply to R4-1, R4A and R4B Districts, unless separate provisions for the districts with suffixes are listed within such section. Wherever a section lists only a district with a suffix, the provisions applicable to such district are different from the provisions that district without a suffix. If a section lists only a C4-6A District, therefore, the provisions of that section are not applicable to a C4-6 District.

### ZR § 12-10 Definitions

#### Basement

A “basement”, except where a #base plane# is used to determine #building# height, is a #story# (or portion of a #story#) partly below #curb level#, with at least one-half of its height (measured from floor to ceiling) above #curb level#...

\* \* \*

#### Cellar

A “cellar”, except where a #base plane# is used to determine #building# height, is a space wholly or partly below #curb level#, with more than one-half its height (measured from floor to ceiling) below #curb level#...; and

### ZR § 25-634 Curb Cut Regulations for Community Facilities

...A minimum distance of 18 feet from any other curb cut on the same or adjacent #zoning lots# shall be maintained, except where the Commissioner of Buildings determines that, due to the location of curb cuts constructed prior to November 28, 2007, on adjacent #zoning lots#, there is no way to locate the curb cut 18 feet from such adjacent existing curb cuts; and

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Permit should be revoked for the following reasons: (1) the proposed community facility building does not comply with the R2A zoning district regulations; (2) the subject building exceeds the maximum permitted floor area because the lowest level of the building qualifies as a basement rather than a cellar; and (3) the proposed curb cut does not comply with the Zoning Resolution because it is located too close to the adjacent curb cut; and

WHEREAS, the Appellant contends that the proposed community facility building does not comply with the underlying R2A zoning district regulations with regard to floor area, lot coverage, perimeter wall height, and front yard depth; and

WHEREAS, specifically, the Appellant argues that the Article II, Chapter 4 bulk regulations for community facilities in residence districts do not apply to the subject community facility building because it is located in an R2A zoning district, not an R2 zoning district, and therefore, the proposed community facility must comply with the Article II, Chapter 3 bulk regulations which govern residential buildings in residential districts; and

WHEREAS, as to the floor area, the Appellant contends that the floor area of the proposed community facility building exceeds the permitted floor area ratio (“FAR”) of 0.5 in the subject R2A zoning district because the lowest level of the building is not a cellar, but rather a basement which must be included in the calculation of floor area; and

WHEREAS, the Appellant further contends that even if the space is a cellar, it should be counted as floor area since there will be classrooms located in the cellar; and

WHEREAS, finally, the Appellant argues that the proposed curb cut for the subject site is located too close to an adjacent curb cut; and

WHEREAS, specifically, the Appellant claims that the proposed curb cut must be 16’-0” away from the adjacent curb cut, and because the proposed curb cut is located less than 16’-0” from the adjacent existing curb cut it is non-compliant; and

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# MINUTES

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## DOB'S POSITION

WHEREAS, DOB contends that the proposed community facility building is compliant with the underlying R2A zoning district regulations, and therefore the Permit was properly issued; and

WHEREAS, DOB asserts that, pursuant to ZR § 11-25, all regulations applicable to R2 zoning districts are also applicable to R2A zoning districts, unless the Zoning Resolution expressly provides otherwise; and

WHEREAS, DOB states that in the instant case the Article II, Chapter 4 bulk regulations for community facility buildings in residential districts cite to R2 zoning districts; therefore, since these bulk regulations do not expressly state otherwise, the Article II, Chapter 4 bulk regulations are applicable to the subject community facility building in an R2A zoning district; and

WHEREAS, DOB further states that it reviewed the zoning calculations for the proposed community facility building pursuant to the proper Article II, Chapter 4 bulk regulations submitted on the required ZD1 Zoning Diagram, and DOB has determined that the proposed building complies with the applicable bulk regulations; and

WHEREAS, as to the floor area calculation, DOB notes that ZR § 12-10 defines a cellar, in part, as “a space wholly or partly below curb level, with more than one-half its height (measured from floor to ceiling) below curb level...” and it defines a basement, in part, as “a story (or portion of a story) partly below curb level, with at least one-half of its height above curb level”; and

WHEREAS, DOB states that it has reviewed the plans submitted for the proposed community facility building and has confirmed that the cellar space meets the ZR § 12-10 definition of cellar because more than one-half of its height is below curb level; and

WHEREAS, DOB notes that the ZR § 12-10 definition of floor area states that basement space is included in the calculation of floor area, but that “the floor area of a building shall not include: (1) cellar space, except where such space is used for dwelling purposes...”; and

WHEREAS, DOB therefore asserts that since the cellar space is not being used for dwelling purposes, but is rather being used for community facility nursery school purposes, the cellar is not included in the floor area calculation; and

WHEREAS, as to the location of the curb cut, DOB states that ZR § 25-634 regulates the distance between curb cuts for community facilities in residential districts and states that curb cuts must be located at least 18 feet from any other curb cuts except where DOB determines that “due to the location of curb cuts constructed prior to November 28, 2007, on adjacent zoning lots, there is no way to locate the curb cut 18 feet from such adjacent existing curb cuts”; and

WHEREAS, DOB states that the proposed curb cut is located on 214<sup>th</sup> Street in front of the side lot ribbon and adjacent to an existing curb cut, which was installed prior to November 28, 2007; and

WHEREAS, DOB further states that it has determined

that, due to the location of the adjacent curb cut, there is no way to locate the proposed curb cut 18 feet away and that the location of the proposed curb cut is the best location for public safety since it is not located on Union Turnpike, an arterial road with a center divider; and

WHEREAS, therefore, DOB contends that the proposed location of the curb cut at the subject site complies with the Zoning Resolution; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the proposed community facility building in an R2A zoning district is governed by the Article II, Chapter 4 bulk regulations applicable to community facility uses in residential districts, and that the proposed building complies with the underlying district regulations; and

WHEREAS, specifically, the Board finds that the text of ZR § 11-25 is clear and unambiguous in that all regulations applicable to R2 zoning districts are also applicable to R2A zoning districts, unless the Zoning Resolution expressly provides otherwise; and

WHEREAS, the Board further finds that since the bulk regulations of Article II, Chapter 4 apply to R2 zoning districts and do not expressly provide otherwise, they also apply to the proposed community facility building in an R2A zoning district; and

WHEREAS, the Board notes that the Appellant has not made any assertion that the proposed community facility building does not comply with the Article II, Chapter 4 bulk regulations, and since the Board has determined that these regulations apply to the proposed building, the Board defers to DOB's determination that the proposed building complies with the underlying zoning district regulations; and

WHEREAS, similarly, the Appellant has provided no evidence in support of its assertion that the lowest level of the building should be classified as a basement rather than a cellar, and the Board agrees with DOB's conclusion that it qualifies as a cellar under ZR § 12-10 because more than one-half of its height is below curb level; and

WHEREAS, the Board further agrees with DOB that because the lowest level of the building qualifies as a cellar and is not being used for dwelling purposes, that space is not included in the calculation of floor area; and

WHEREAS, finally, the Board agrees with DOB that ZR § 25-634 requires that curb cuts for community facilities in residential districts be located at least 18 feet from any other curb cut unless DOB determines that there is no way to locate the curb cut 18 feet from an adjacent existing curb cut; and

WHEREAS, because DOB has determined that there is no way to locate the proposed curb cut 18 feet away from the adjacent pre-existing curb cut, and that the location of the proposed curb cut is the best location for public safety, the Board agrees with DOB that the proposed curb cut at the subject site complies with the underlying zoning district regulations; and

WHEREAS, accordingly, the Board agrees with DOB that there is no basis for the revocation of the Permit.

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# MINUTES

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*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated May 15, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, November 15, 2012.

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## **89-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

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## **92-07-A thru 94-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

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## **95-07-A**

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thornycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district. PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

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## **88-12-A & 89-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., Van Wagner Communications, LLC

OWNER OF PREMISES – Name Mutual, LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. C6-4 zoning district.

PREMISES AFFECTED – 462 11<sup>th</sup> Avenue, between 37<sup>th</sup> and 38<sup>th</sup> Streets, Block 709, Lot 3, Borough of Manhattan.

### **COMMUNITY BOARD #4M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

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## **95-12-A & 96-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.

OWNER OF PREMISES – Calandra LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-2 zoning district.

PREMISES AFFECTED – 2284 12<sup>th</sup> Avenue, west side of 12th Avenue between 125<sup>th</sup> and 131<sup>st</sup> Streets, Block 2004, Lot 40, Borough of Manhattan.

### **COMMUNITY BOARD #9M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

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## **99-12-A & 100-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

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# MINUTES

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Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

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## 101-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq. for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – Mazda Realty Associates.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-5 zoning district.

PREMISES AFFECTED – 13-17 Laight Street, south side of Laight Street between Varick Street and St. John’s Lane, Block 212, Lot 18, Borough of Manhattan.

### COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

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## ZONING CALENDAR

### 97-11-BZ

#### CEQR #12-BSA-001X

APPLICANT – Eric Palatnik, P.C., for Cross Bronx Food Center, Inc., owner.

SUBJECT – Application July 1, 2011 – Variance (§72-21) to permit the expansion of an auto service station (UG 16B) and enlargement of an accessory convenience store use on a new zoning lot, contrary to use regulations. The existing use was permitted on a smaller zoning lot under a previous variance. R5 zoning district.

PREMISES AFFECTED – 1730 Cross Bronx Expressway, northwest corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot 28 (28,29), Borough of Bronx.

### COMMUNITY BOARD #9BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

Absent: Vice Chair Collins .....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 14, 2011, acting on Department of Buildings Application No. 220105865, reads in pertinent part:

Proposed enlargement of existing automotive service station, use group 16, with accessory convenience store is contrary to ZR Section 22-00 and previous BSA calendar number 97-97-BZ and therefore must be referred to the NYC BSA; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in an R5 zoning district, the enlargement of the zoning lot for a gasoline service station (Use Group 16), and certain modifications to the site, which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 5, 2012, after due notice by publication in *The City Record*, with continued hearings on August 7, 2012 and September 25, 2012, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, State Senator Ruben Diaz recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Rosedale Avenue and the Cross Bronx Expressway within an R5 zoning district, with 140 feet of frontage along the Cross Bronx Expressway service road and approximately 87 feet of frontage on Rosedale Avenue; and

WHEREAS, the site consists of tax lot 28 - formerly lots



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28 and 29 - with a total lot area of 13,660 sq. ft., formed by two previously separate lots: (1) former Lot 28, an irregularly-shaped lot at the corner of the Cross Bronx Expressway and Rosedale Avenue, with a lot area of 11,160 sq. ft.; and (2) former Lot 29, a narrow lot adjacent to the south of former Lot 28, with a width of approximately 25 feet, a depth of approximately 125 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the site is currently occupied by a gasoline service station with a convenience store and accessory parking for ten vehicles (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the former Lot 28 portion of the site since 1997 when, under BSA Cal. No. 97-97-BZ, the Board granted a variance to permit the gasoline service station with convenience store, and parking for three cars for a term of 20 years, to expire on October 7, 2017; and

WHEREAS, the site was also the subject of a 1990 approval, under BSA Cal. No. 391-89-BZ, which allowed for the construction of a one-story retail food market with accessory parking, which was never constructed and Lot 28 remained vacant until the 1997 action; and

WHEREAS, the 1997 approval did not include previous Lot 29, which was added sometime after the 1997 approval and is occupied by eight accessory parking spaces; and

WHEREAS, the applicant seeks to (1) legalize and enlarge the zoning lot which did not include the adjacent property at 1417 Rosedale Avenue (former Lot 29); (2) to permit the enlargement by 364 sq. ft. of the existing accessory convenience store with a floor area of 1,214 sq. ft.; and (3) to make other site modifications; and

WHEREAS, the applicant proposes to relocate the trash enclosure, tank vents, and light to accommodate the proposed enlargement to the convenience store; and

WHEREAS, because an increase in the degree of the existing non-conforming use, including the use of accessory parking on the adjacent lot, is not permitted in the R5 zoning district, the applicant seeks a variance for the site; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of use of the site; (2) the narrow size and configuration of former Lot 29; and (3) the location of the site on a major thoroughfare surrounded by several overbuilt multiple dwelling buildings; and

WHEREAS, the applicant notes that the gasoline service station has been located on the site for approximately 15 years and the site was first the subject of a variance in 1990, which originally permitted a 4,994 sq. ft. retail food market to be constructed at the site; and

WHEREAS, the prior variances granted by the Board found that there were unique conditions on the site which created practical difficulties and unnecessary hardship in developing the site as a conforming use; and

WHEREAS, the applicant states that it now seeks to enlarge the existing building by 364 sq. ft. and to legalize the enlargement of the zoning lot by incorporating former Lot 29, and that otherwise the conditions on the site have not changed

since the Board's prior grants; and

WHEREAS, the applicant notes that former Lot 29 was acquired in 2001 from the City as a vacant lot, and that the City demolished the home formerly on the site; and

WHEREAS, the applicant submitted a referee's affidavit and deed in support of its representations that it purchased Lot 29 through a foreclosure sale; and

WHEREAS, the applicant notes that the former Lot 29 has a width of 25.27 feet and a depth of 122.25 feet and that it is between the original Lot 28 and the side yard of an adjacent apartment building, which runs nearly the depth of the lot and is within just a few feet of the shared lot line; and

WHEREAS, as to the location on the Cross Bronx Expressway, the applicant states that there is direct access to the site from the Cross Bronx Expressway service road; there is no visual or sound buffering between the site and the expressway and, thus, the view of the major thoroughfare and the associated noise constrains the site for residential use, particularly low density; and

WHEREAS, the applicant asserts that the location of Lot 29 between the legal gasoline service station and the apartment building close to the lot line contributes to an unmarketable condition which ultimately resulted in the former home on the site being abandoned and the City foreclosing on the property and demolishing the home; and

WHEREAS, as to uniqueness, the applicant asserts that Lot 29 is the only vacant lot in the vicinity on a block occupied exclusively by multiple dwelling buildings and commercial uses; further, it has a long, narrow shape, close proximity to over-built apartment buildings, and is within 60 feet of the Cross Bronx Expressway service road; and

WHEREAS, the applicant submitted an analysis of the 16 vacant lots within an 800-ft. radius of the site and distinguished all of them for reasons including that several of the vacant lots are located in the adjacent R6 zoning district, which allows for an FAR of 2.43; several are too small or too irregularly-shaped to accommodate any development; several are surrounded only by residential uses; and several are within greater distance from the Cross Bronx Expressway; and

WHEREAS, the applicant states that only one site has been developed in the surrounding 800 feet in the past five years, which is a small triangular lot that commenced construction when the area was still zoned R6, and was the subject of a common law vested rights application, pursuant to BSA Cal. No. 195-07-A; and

WHEREAS, the applicant asserts that most of the residential uses have been in existence prior to the construction of the Cross Bronx Expressway and that there has not been any new residential construction in the study area since portions of it were downzoned from R6 to R5; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios for the

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entire site: (1) an as-of-right three-story apartment building with an FAR of 1.25; (2) a lesser variance of a mixed-use alternative including a community facility use on the first floor and residential use above; and (3) the proposed use of the entire site for the gasoline service station use; and

WHEREAS, at the Board's direction, the applicant also analyzed (1) an alternate scenario of a two-family residential building with an FAR of 1.24 and a side yard with a width of 8'-0" on the Lot 29 portion of the site, and (2) an alternate scenario of a two-family residential building with an FAR of 1.25 on the Lot 29 portion of the site; both scenarios maintained the gasoline service station use on the remainder of the site; and

WHEREAS, the feasibility study concluded that only the proposed development would realize a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that, because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the surrounding area is characterized by a mix of one- and two-family homes, multiple dwelling buildings, and some commercial and automotive uses; and

WHEREAS, the applicant states that the enlargement of the existing zoning lot will serve to improve the circulation of the site and has been functioning well under the enlarged scheme for several years; and

WHEREAS, the applicant notes that the use of the Lot 29 portion of the site is limited to parking; and

WHEREAS, the applicant notes that the buildings which surround the site include a two-story multiple dwelling building directly to the south and a large six-story multiple dwelling building to the west, as well as two other six-story multiple dwelling buildings on the block; and

WHEREAS, the applicant asserts that the multiple dwelling buildings are over-built under current zoning regulations, with FAR's in the range of 4.2, more than three times the district's maximum of 1.25; and

WHEREAS, the applicant notes that the multiple dwelling buildings also have a significant amount of lot coverage; and

WHEREAS, thus, the applicant asserts that the proposed use is compatible with the other uses on the subject block and the corner location along the service road; and

WHEREAS, the owner of the multiple dwelling building adjacent to Lot 29 provided testimony to the Board, citing concerns about the concrete and fencing along the lot line and expressed an interest that there be a buffer between the parking area on Lot 29 and the shared lot line; and

WHEREAS, in response, the applicant agreed to move the fence approximately seven feet from the shared lot line and to allow for a buffer as well as parking for the neighbor within the buffer area; and

WHEREAS, the applicant and the neighbor have informed the Board that they have a private agreement to maintain the buffer area, separate from the terms of the Board's resolution; and

WHEREAS, however, the Board notes that the fence location and neighbor's parking space on Lot 29 are reflected on the Board-approved plans and any change would require the Board's review and approval; and

WHEREAS, as to other site improvements, the applicant agreed to (1) install and maintain a white PVC fence with a height of 6'-0" along the entire length of the buffer area between the parking and the adjacent lot; (2) direct all lighting downward and away from adjacent uses; (3) relocate the trash enclosure to the northern portion of the lot, surrounded by fencing with opaque slats; (4) remove the air station and self-serve car wash; and (5) post signage that states "No Radio Playing or Car Idling;" and

WHEREAS, the applicant also submitted photographs reflecting that the fence has been relocated and repaired as described; and

WHEREAS, the neighbor also provided testimony raising concerns about large truck traffic to the site, due to diesel fuel sales; and

WHEREAS, accordingly, the Board inquired into whether the diesel fuel sales were necessary to the business plan and, ultimately, rejecting the applicant's assertion that they were necessary; and

WHEREAS, the Board notes that the sale of diesel fuel attracts large trucks to the site, which it deems to be incompatible with adjacent uses and, thus, indicated to the applicant that not only is a reasonable return possible without diesel fuel, but also the use of the site is more compatible with surrounding residential use without the truck traffic it attracts; and

WHEREAS, the applicant states that the enlargement of the existing building would be located entirely on the former Lot 28 portion of the site and solely consists of an 364 sq. ft. enlargement to the one-story convenience store, at the northeast corner of the site, closest to the Cross Bronx Expressway and furthest from adjacent residential uses; and

WHEREAS, the applicant represents that the enlargement of the zoning lot will not result in the use of any additional equipment on the site or the creation of any additional noise or other disturbances on the site; and

WHEREAS, at hearing, the Board directed the applicant to provide a scenario which eliminated the diesel sales and the enlargement to the convenience store; and

WHEREAS, upon review of the alternate scenario, the Board concluded that neither the enlargement to the convenience store nor the inclusion of diesel fuel sales is appropriate for the site; and

WHEREAS, based upon the above, the Board finds that this action, with the noted modifications to the original

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proposal, will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

*Insert Environmental*

WHEREAS, the project is classified as an unlisted action pursuant to pursuant to 6 NYCRR, Part 617.12 and 617.4; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration determination under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located in an R5 zoning district, the enlargement of the zoning lot for a gasoline service station (Use Group 16), and certain modifications to the site, which does not conform to district use regulations, contrary to ZR § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 17, 2012"- (5) sheets and *on further condition*:

THAT the term of this grant will expire on November 15, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT landscaping will be planted and maintained and a fence installed and maintained as reflected on the BSA-approved plans;

THAT all lighting will be directed downward and away from adjacent uses;

THAT there will not be an air station or self-serve car wash;

THAT a sign will be posted stating "No Radio Playing or Car Idling;"

THAT signage will be as indicated on the BSA-approved plans;

THAT vents form the underground storage tanks will be located away from the adjacent residential uses in accordance with the BSA-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 15, 2012.

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**187-11-BZ**

**CEQR #12-BSA-048K**

APPLICANT – Davidoff Malito & Hutcher, LLP, for Sanford Realty, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to allow for the enlargement and conversion of existing manufacturing building to mixed-use residential and commercial, contrary to use regulations, (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 118 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
Negative:.....0  
Absent: Vice Chair Collins .....1

**THE RESOLUTION** –

WHEREAS, decision of the Brooklyn Borough Commissioner, dated November 15, 2011, acting on Department of Buildings Application No. 320372725, reads:

Proposed residential building cannot be built in M1-1 zoning district, as per Section 42-00 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the residential conversion (UG 2) of an existing four-story manufacturing building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on May 1, 2012, after due notice by publication in the *City Record*, with continued hearings on June 5, 2012, and July 10, 2012, and then to decision on November 15, 2012 (the October 30, 2012 decision date was postponed due to the storm-related office closure); and

WHEREAS, the building and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of Sanford Street between Myrtle Avenue and Park Avenue, within an M1-1 zoning district; and

WHEREAS, the site has 37'-9" of frontage on Sanford Street, a depth of 100 feet, and a lot area of 3,775 sq. ft.; and

WHEREAS, the site is currently occupied by a four-

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story manufacturing building, with a total floor area of 12,836 sq. ft. (3.4 FAR); and

WHEREAS, the building was constructed in approximately 1931 and has been vacant for three years; and

WHEREAS, the applicant proposes to convert the building to residential use with commercial use at a portion of the ground floor, and to make a slight modification to the building envelope to improve the circulation of the building, resulting in a building with a total floor area of 12,566.5 sq. ft. (3.33 FAR); and

WHEREAS, specifically, the applicant proposes to use a 1,376 sq. ft. (0.37 FAR) portion of the first floor for conforming commercial use, and to convert the remaining 11,190.5 sq. ft. (2.96 FAR) of the building to 14 residential units; and

WHEREAS, the applicant originally proposed to convert the subject building to residential and ground floor commercial uses, and to enlarge the existing building by constructing a partial fifth floor at the roof level, resulting in a total floor area of 14,447 sq. ft. (3.83 FAR) and two additional dwelling units (16 total dwelling units); and

WHEREAS, at hearing, the Board raised concerns regarding the proposed enlargement and additional floor area, and directed the applicant to remove the partial fifth floor; and

WHEREAS, in response, the applicant submitted revised plans removing the partial fifth floor enlargement and reflecting the current proposal; and

WHEREAS, because residential use is not permitted in the underlying M1-1 zoning district, the subject use variance is requested; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in occupying the subject site in conformance with underlying district regulations: the existing building is obsolete for conforming manufacturing use; and

WHEREAS, the applicant represents that the building is obsolete for modern manufacturing due to (1) the small and narrow footprint of the building, (2) wood decking and joists which cannot support loads required for manufacturing, (3) an inoperable elevator and twisted stairwell, (4) the low floor-to-ceiling heights, (5) the lack of a loading berth, and (6) the site's mid-block frontage along a narrow street with low traffic volume; and

WHEREAS, as to the building's small and narrow footprint, the applicant states that the building is unusually narrow at 37'-9" with a floorplate of 3,209 square feet, which renders it unmarketable for conforming occupancy; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a lot study which examined 133 lots within the surrounding M1-1 and M1-2 area and found 28 were occupied with conforming uses and have a street frontage of 38'-0" or less; and

WHEREAS, the lot study submitted by the applicant indicates that of those 28 lots, 25 are distinguishable from the subject property because the lots are either: (1) connected to buildings on adjoining narrow lots; (2) part of a larger

assemblage; (3) configured to allow off-street parking/loading; (4) occupied by a residential use; or (5) located along Nostrand Avenue, a busy thoroughfare; and

WHEREAS, accordingly, the lot study indicates that only three lots of the total 133 lots within the study area were deemed to be comparable to the subject site in terms of their lot width and conforming occupancy; and

WHEREAS, as to the building's load capacity, the applicant represents that the existing floors with wood decking and joists do not have the structural capacity to carry the requisite load capacity for conforming uses; and

WHEREAS, specifically, the applicant states that the 2008 Building Code requires a minimum uniformly distributed live load of 125 p.s.f. and a minimum concentrated live load of 2000 lbs; however, the building's current load capacity measures between 107 and 69 p.s.f. and therefore cannot support a manufacturing warehouse load; and

WHEREAS, the applicant represents that, aside from its low load-bearing capacity, the building's dated floor system consisting of wood decking over wood joists is nearly 50 percent of the building and, aside from any structural stability related work, would require the entire floor and sub-floor to be removed, the affected joists replaced, and the sub-floors and floors reinstalled to achieve a level condition, resulting in significant additional costs associated with the reconstruction of the wood joists and wood decking; and

WHEREAS, as to the inadequate elevator shaft and staircases, the applicant states that the building lacks a functioning elevator and the size of the elevator, at 8'-0" by 8'-0", is not large enough to appropriately market the building for conforming tenancy; and

WHEREAS, the applicant states that the ability to vertically transport products and goods to and from the building's upper levels is further compromised by the existing main stairwell, which would need to be demolished and re-installed because of its uneven and sagging condition; and

WHEREAS, as to the floor-to-ceiling height, the applicant notes that the floor-to-ceiling height varies from 12'-0" to 9'-10" throughout the building; and

WHEREAS, the applicant represents that typical wholesale showroom minimum ceiling heights are 14'-0", and ceiling heights needed for warehousing goods requires a minimum ceiling height of 25'-0" to facilitate the stacking of pallets, and as such, the low ceiling heights of the existing building contribute to the functional obsolescence of the building for conforming manufacturing use; and

WHEREAS, as to the street conditions, the applicant states that Sandford Street, although mapped at a width of 50'-0", is paved for a width of only approximately 30'-0", and off-street parking is permitted on both sides of the street; this coupled with a lack of a loading berth constrains vehicle delivery and access to the site and trailer/truck loading for a conforming use; and

WHEREAS, the applicant states that the building has been vacant for nearly three years, and that the owner has actively attempted to market the space within the building

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for over two years for a conforming use, but has been unsuccessful; and

WHEREAS, based upon the above, the Board finds that the combination of the small and narrow footprint, wood decking and joists which cannot support load required for manufacturing, inoperable elevator and twisted stairwell, low floor to ceiling height, lack of a loading birth, and mid-block frontage along a narrow, low traffic street create unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a feasibility study analyzing: (1) the building used in conformance with M1-1 zoning district regulations; (2) the original proposal with a fifth floor addition; and (3) the proposed four-story residential building with ground floor commercial use; and

WHEREAS, the applicant's feasibility study reflects that the building occupied by a conforming use does not provide a reasonable return but that the proposed building does result in a reasonable return; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that use in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed residential use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that although zoned M1-1, the site is two blocks west of an R6 zoning district, and two blocks east of an MX-4 (M1-2/R6A) district, which both permit residential uses as-of-right; and

WHEREAS, the applicant represents that the surrounding area is characterized by a mix of residential uses and commercial uses; and

WHEREAS, the land use map submitted by the applicant shows residential uses immediately to the north and west of the site, and across Sandford Street; and

WHEREAS, the applicant represents that the conforming uses in the surrounding area are mostly non-intrusive, one-story garages and undeveloped property; and

WHEREAS, based upon the above, the Board finds that the proposed residential conversion of the subject building will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a partial fifth story enlargement to the existing building, which would have resulted in a floor area of 14,447 sq. ft. (3.83 FAR) and two additional dwelling units (16 total dwelling units); and

WHEREAS, in response to concerns raised by the Board, the applicant revised its proposal to remove the fifth story enlargement; and

WHEREAS, accordingly, the Board finds that the current proposal, is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 12BSA048K, dated April 30, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and air quality; and

WHEREAS, DEP reviewed and accepted the October 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an M1-1 zoning district, the residential conversion (UG 2) of an existing four-story manufacturing building, which is contrary to ZR § 42-00, *on condition* that

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any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 22, 2012"- eight (8) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a total floor area of 12,566.5 (3.33 FAR); a residential floor area of 11,190.5 (2.96 FAR); a commercial floor area of 1,376 sq. ft. (0.37 FAR); a total height of 48'-0"; and 12 residential units, as illustrated on the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 15, 2012.

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## 190-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.

### COMMUNITY BOARD #3BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for continued hearing.

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## 9-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mikhail Dadashev, owner.

SUBJECT – Application January 17, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 186 Girard Street, corner of Oriental Boulevard and Girard Street, Block 8749, Lot 278, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

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## 12-12-BZ & 110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.

Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for deferred decision.

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## 55-12-BZ

APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

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## 67-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 1442 First Avenue, LLC, owner.

SUBJECT – Application March 21, 2012 – Variance (§72-21) to allow for the extension of an eating and drinking establishment to the second floor, contrary to use regulations (§32-421). C1-9 zoning district.

PREMISES AFFECTED – 1442 First Avenue, southeast corner of the intersection formed by 1<sup>st</sup> Avenue and East 75<sup>th</sup> Street, Block 1469, Lot 46, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

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## 104-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April

# MINUTES

11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

## COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 112-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Raymond B. and Colleen Olsen, owners.

SUBJECT – Application April 23, 2012 – Special Permit (§73-621) for the enlargement of an existing one-family dwelling, contrary to open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue, Block 444, Lot 15, Borough of Staten Island.

## COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 137-12-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133) regulations. M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73<sup>rd</sup> Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

## COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for deferred decision.

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## 154-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Caroline Teitelbaum and Joshua Teitelbaum, owners.

SUBJECT – Application May 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1202 East 22<sup>nd</sup> Street, west side of East 22<sup>nd</sup> Street between Avenue K and Avenue L, Block 7621, Lot 59, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 163-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.

SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30<sup>th</sup> Street, East 34<sup>th</sup> Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30<sup>th</sup> Street and First Avenue, Block 962, Lot 80, 108, 1001-1107, Borough of Manhattan.

## COMMUNITY BOARD #6M

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for deferred decision.

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## 209-12-BZ

APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.

SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.

PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing

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# MINUTES

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closed.

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**241-12-BZ**

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.

**COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 97, Nos. 46-48

November 28, 2012

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## DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

*Commissioners*

Jeffrey Mulligan, *Executive Director*

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Tuesday, November 20, 2012**

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284-06-A	1045 Beach 9 <sup>th</sup> Street, Queens
1005-66-BZ	320 West 30 <sup>th</sup> Street, Manhattan
982-83-BZ	191-20 Northern Boulevard, Queens
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249-12-BZ	1320 East 27 <sup>th</sup> Street, Brooklyn

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# DOCKETS

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New Case Filed Up to November 20, 2012

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**311-12-BZ**

964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot(s) 12, Borough of **Brooklyn, Community Board: 8**. Variance (72-21) to permit the residential conversion of an existing factory building. M1-1 zoning district. M1-1 district.

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**312-12-BZ**

29-37 Beekman Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot(s) 1,3,37,38, Borough of **Manhattan, Community Board: 1**. Variance (72-21) to increase the maximum permitted floor area to facilitate the construction of a new 34-story, 760-bed dormitory for Pace University in a C6-4 district in the Special Lower Manhattan District. C6-4 district.

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**313-12-BZ**

1009 Flatbush Avenue, block bounded by Flatbush Avenue, Albermarle Road, Bedford Avenue and Tilden Avenue., Block 5126, Lot(s) 1, Borough of **Brooklyn, Community Board: 14**. Special permit (73-36) to permit the continued operation by Bally's Total Fitness of the existing physical culture establishment. C4-2/C4-4A district.

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**314-12-BZ**

350 West 50th Street, block bounded by West 49th Street, Ninth Avenue, West 50th Street and Eighth Avenue., Block 1040, Lot(s) p/ 1 Condo Lot 1003, Borough of **Manhattan, Community Board: 4**. Special permi (73-36) to permit the continued operation by Bally's Total Fitness of Greater New York of the existing physical culture establishment. C6-4(CL) district.

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**315-12-BZ**

23-05 31st Street, East side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot(s) 27&31, Borough of **Queens, Community Board: 1**. Special permit (73-50) to permit a modification of the rear yard requirements Z.R.§33-29 (Special Provisions Applying along District Boundaries). C4-3 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**DECEMBER 4, 2012, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 4, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **135-46-BZ**

APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.

SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) and Amendment (§11-413) of previously approved variance which permitted an Automotive Service Station (UG 16B), which accessory uses, within a residential zoning district, which expired on January 29, 2012. The application seeks to convert the use to Auto Laundry (UG 16B) hand car wash; Waiver for the Rules. R4 zoning district.

PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38<sup>th</sup> Street, between Ryder Avenue and East 38<sup>th</sup> Street, Block 8555, Lot 37, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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### **812-61-BZ**

APPLICANT – Peter Hirshman, for 80 Park Avenue Condominium, owner.

SUBJECT – Application June 28, 2012 – Extension of Term (§11-411) of a previously approved variance permitting in a residential district, the use of an existing accessory multiple dwelling garage for transient parking, which expires on October 24, 2012. R10 & R8B zoning district.

PREMISES AFFECTED – 74-82 Park Avenue, southwest corner of East 39<sup>th</sup> Street and Park Avenue, Block 868, Lot 7502, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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### **165-91-BZ**

APPLICANT – Law Offices of Stuart A. Klein, for United Talmudical Academy, owner.

SUBJECT – Application August 17, 2012 – Extension of Term of a previously approved Special Permit (§73-19) which permitted the construction and operation of a school (UG 3) which expires on September 15, 2012. M1-2 zoning district.

PREMISES AFFECTED – 45 Williamsburg Street West, aka 32-46 Hooper Street, Block 2203, Lot 20, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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### **97-12-A & 98-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.

OWNER OF PREMISES - 620 Properties Associates, LLC.  
SUBJECT – Application April 11, 2012 – Appeal from determination of Manhattan Borough Commissioner of Department of Buildings regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL zoning district.

PREMISES AFFECTED – 620 12<sup>th</sup> Avenue, between 47<sup>th</sup> and 48<sup>th</sup> Streets, Block 1095, Lot 11, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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### **108-09-A & 109-12-A**

APPLICANT – Davidoff Malito & Hatcher LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES - Kehley Holding Corp.  
SUBJECT – Application April 18, 2012 – Appeal from Department of Buildings' determinations that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R. §§42-58 and 52-61.

PREMISES AFFECTED – 46-12 Third Avenue, between 46<sup>th</sup> and 47<sup>th</sup> Streets, Block 185, Lot 25, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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### **205-12-A**

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

OWNER OF PREMISES – Borden Realty Corporation.  
SUBJECT – Application June 29, 2012 – Appeal from the determination of the Department of Buildings that the subject sign is not entitled to non-conforming use status as an advertising sign .R7-2 /C2-4 (HRW) Zoning District.

PREMISES AFFECTED – 355 Major Deegan Expressway, bounded by Exterior Street, Major Deegan Expressway to the east, Harlem River to the west, north of the Madison Avenue Bridge, Block 2349, Lot 46, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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# CALENDAR

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**DECEMBER 4, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 4, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**75-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of a the use of retail (UG 6) on the first floor and expand the use into the cellar with accessory use in the sub-cellar, contrary to §42-14 (D)(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**200-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.

SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of the existing UG4 house of worship contrary §109-121 (floor area), §109-122 (lot coverage) and §54-31 (enlargement of non-complying building). C6-2 zoning district.

PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**244-12-BZ**

APPLICANT – Watchel, Masyr & Missry LLP by Ellen Hay for EQR-600 Washington LLC, owner; Gotham Gym I LLC, lessee.

SUBJECT – Application August 8, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Gotham Gym*). M1-5 zoning district.

PREMISES AFFECTED – 600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot 10, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**258-12-BZ**

APPLICANT – Holland & Knight, LLP, for Old Firehouse No. 4 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the conversion of two buildings into a single-family residence which does not comply with lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district.

PREMISES AFFECTED – 113 East 90<sup>th</sup> Street, north side of East 90<sup>th</sup> Street, 150' west of the intersection of 90<sup>th</sup> Street, and Park Avenue, Block 1519, Lot 7, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, NOVEMBER 20, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**724-56-BZ**

APPLICANT – Michael A. Cosentino for Anthony Nicovic, owner.

SUBJECT – Application June 19, 2012 – Extension of Term (§11-411) of an approved variance which permitted automotive repair (UG 16B), which expires on November 19, 2012. C2-2/R3X & R3-2 zoning district.

PREMISES AFFECTED – 42-42 Francis Lewis Boulevard, Francis Lewis Boulevard from 42<sup>nd</sup> Road to Northern Boulevard. Block 5373. Lot 26, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening, and, pursuant to ZR § 11-411, an extension of term of a prior grant for an automotive repair business, which expired on November 19, 2012; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application provided all conditions of the prior grant are followed; and

WHEREAS, the Auburndale Improvement Association provided testimony about the operation of the site, which included concern that there was a towing business operating at the site, that commercial vehicles park overnight, and that there is excessive signage around the perimeter of the site; and

WHEREAS, the subject 10,020 sq. ft. lot is located on the west side of Francis Lewis Boulevard between 42<sup>nd</sup> Road and Northern Boulevard; and

WHEREAS, the site is located within a C2-2 (R3-2) zoning district and is occupied by an automotive service

business; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 19, 1957, when the Board granted a variance to permit the construction and maintenance of a gasoline service station with accessory uses and parking for cars awaiting service for a term of 15 years; and

WHEREAS, subsequently, the term has been extended and the grant amended by the Board at various times; the most recent extension was on June 22, 2004, for a term of ten years from the expiration of the prior grant, expiring on November 19, 2012; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, in consideration of the civic association’s concerns, the Board directed the applicant to (1) remove excess signage; and (2) address the concern about commercial parking onsite and the presence of a towing business; and

WHEREAS, in response, the applicant (1) provided photographs which reflect that the excess signage has been removed; (2) installed a sign stating that parking is prohibited and subject to towing; and (3) stated that parking on the site is reserved to vehicles awaiting service and that the towing business only delivers vehicles to the site, but does not otherwise operate there; and

WHEREAS, the owner submitted an affidavit stating that he will not permit parking onsite, except by cars awaiting service; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds that a limited extension of term of five years is appropriate, with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure and *reopens and amends* the resolution, as adopted on November 19, 1957, as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of five years from the expiration of the prior grant, to expire on November 19, 2017, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received October 4, 2012’–(2) sheets, and *on further condition*:

THAT the term of this grant shall be for five years from the expiration of the prior grant, to expire on November 19, 2017;

THAT parking on the site will be limited to vehicles awaiting service and any other commercial or overnight parking is prohibited;

THAT a No Parking sign be installed and maintained on the fence;

THAT signage will be limited to that reflected on the BSA-approved plans;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not

# MINUTES

specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 401766665)

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 98-06-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

## COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a site within an R4A zoning district, a proposed four-story yeshiva, which does not comply with floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage, contrary to ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 11, 2012 and October 23, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Queens, recommends approval of the application; and

WHEREAS, City Councilmember James Sanders, Jr.

submitted testimony in support of the application; and

WHEREAS, this application is being brought on behalf of Yeshiva Siach Yitzchoc, a not-for-profit educational entity (the “Yeshiva”); and

WHEREAS, the Board notes that companion applications, under BSA Cal. No. 284-06-A, seeking an amendment to a waiver of GCL Section 35 to permit a portion of the Yeshiva to be built within the bed of a mapped street, were brought concurrently with the original and amendment application and the amendment to the GCL waiver is addressed in a separate application granted on the same date; and

WHEREAS, the subject site is located on the southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, and is currently occupied by a two-family home and garage, which will be demolished; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2007 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an R4A zoning district, a four-story yeshiva building, contrary to floor area, FAR, total height, front and side yards, sky exposure plane, side setback, and lot coverage regulations set forth at ZR §§ 24-11, 24-521, 24-34, 24-35, and 24-551; and

WHEREAS, the applicant represents that due to financing constraints, the building has not been constructed and the Yeshiva now requests that the Board allow for the amendment of the grant to modify certain conditions of the Board-approved plans; and

WHEREAS, specifically, the applicant proposes to (1) increase the proposed floor area from 24,692 sq. ft. to 27,193 sq. ft.; (2) increase the wall height from 46’-0” to 50’-0”; (3) increase the front yard depth along Beach 9<sup>th</sup> Street from 9’-10” to 10’-9 ½”; (4) reduce the front yard depth along Dinsmore Avenue from 13’-3” to 8’-6 ½”; (5) maintain the approved side yards; (6) reduce the setback; and (7) increase the lot coverage from 64 percent to 68.32 percent; and

WHEREAS, the applicant also seeks an extension of time to complete construction, which expired on July 10, 2011; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, at hearing, the Board asked the applicant to describe in more detail the need for the redesign of the building and the associated supplemental relief, specifically the increase in height and floor area; and

WHEREAS, in response, the applicant stated that in the five years since the original grant, its student population has grown significantly and now the originally approved building, which was intended to accommodate pre-kindergarten through high school, will only accommodate kindergarten through eighth grade; and

WHEREAS, the applicant states that there are 300 students now and that the student body increases by approximately 25 students per year and that the building will

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accommodate a maximum capacity of 400; and  
WHEREAS, the applicant states that at the time of the original application, there were 180 students; and

WHEREAS, as far as programmatic needs, the applicant states that it now needs 18 classrooms (two classrooms for each of the nine grades) as opposed to the original plan for 16; and

WHEREAS, the applicant states that the increased size of the building's footprint at every floor is driven in part by the design of the Beis Medrash study hall at the first floor; and

WHEREAS, the applicant represents that the front yard dimensions have been modified to accommodate a larger Beis Medrash on the first floor, rather than on the second floor; and

WHEREAS, the applicant states that it requires four additional feet of building height because after the prior approval, it determined that the water table is at 19 feet, not 26 feet, which precludes yeshiva space from being constructed any more than four feet below ground; and

WHEREAS, accordingly, the applicant represents that a greater portion of the building must be above grade, resulting in a greater height; and

WHEREAS, in support of the claim about the sub-surface conditions, the applicant submitted a letter from an architect explaining that the soil conditions do not permit construction below a depth of four feet, consistent with the soil borings; and

WHEREAS, the Board directed the applicant to perform a building height study in the surrounding area to establish the context and to determine whether the proposed height of 50'-0" is compatible; and

WHEREAS, the applicant performed a height study, which identified eight buildings nearby (five at least partially within a 400-ft. radius of the site and the remaining three on adjacent blocks) with heights greater than 50'-0"; and

WHEREAS, the Board accepts the applicant's description of its change in programmatic needs and accepts that the modifications to the plans represent the minimum necessary to accommodate those needs; and

WHEREAS, the Board is also satisfied that the applicant's height study establishes a context for a building with a height of 50'-0"; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 10, 2007, so that as amended this portion of the resolution shall read: "to permit amendments to the yeshiva design; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received November 19, 2012'- Eight (8) sheets; and *on further*

*condition:*

THAT the building parameters will be as follows: a maximum floor area of 27,193 sq. ft.; a maximum height of 50'-0"; a minimum front yard depth along Beach 9<sup>th</sup> Street of 10'-9 1/2"; a minimum front yard depth along Dinsmore Avenue of 8'-6 1/2"; and a maximum lot coverage of 68.32 percent;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the time to complete construction will be extended for four years from the date of this grant;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 402313493)

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 284-06-A

APPLICANT – Eric Palatnik, P.C., for Yeshiva Slach Yitzchok, owner.

SUBJECT – Application November 29, 2011 – Amendment to a previously granted waiver to Section 35 of the General City Law and a variance (§72-21) for a Yeshiva (*Yeshiva Siach Yitzchok*), contrary to height and setbacks (§24-551 and §24-521), floor area (§24-11), lot coverage (§24-11), front yards (§24-34), and side yards (§24-35) regulations. The amendment includes an increase in floor area and building height; Extension of Time to complete construction. R4A zoning district.

PREMISES AFFECTED – 1045 Beach 9<sup>th</sup> Street, southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, Block 15554, Lot 49, 51, Borough of Queens.

## COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted waiver of General City Law Section 35 to permit a portion of a yeshiva to be built within the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in *The City Record*, with continued hearings on September 11, 2012 and October 23, 2012, and then to decision on November 20, 2012; and



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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this application is being brought on behalf of Yeshiva Siach Yitzchoc, a not-for-profit educational entity (the "Yeshiva"); and

WHEREAS, the Board notes that companion applications, under BSA Cal. No. 98-06-BZ, seeking a variance pursuant to ZR § 72-21, to permit a four-story yeshiva building, contrary to zoning district regulations, were brought concurrently with the original and amendment application, and the amendment to the variance is addressed in a separate application granted on the same date; and

WHEREAS, the subject site is located on the southwest corner of Beach 9<sup>th</sup> Street and Dinsmore Avenue, and is currently occupied by a two-family home and garage, which will be demolished; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2007 when, under the subject calendar number, the Board granted a waiver to General City Law Section 35 to permit a portion of a yeshiva to be built within the bed of a mapped street; and

WHEREAS, the applicant's revised building design, as discussed in greater detail in the companion application, still reflects construction in the bed of the mapped portion of Dinsmore Avenue, but the encroachment differs due to the amended design; specifically, previously, the proposed front yard on Dinsmore Avenue had a depth of 13'-3" and now the proposed depth is 8'-6 1/2"; and

WHEREAS, by letter dated January 6, 2012, the Department of Environmental Protection states that it has reviewed the application and has no objections to the proposed amendment as a width of 30 feet in Dinsmore Avenue will remain available for the installation, maintenance and/or construction of the existing and future sewers and water mains; and

WHEREAS, the applicant notes that its proposal provides for a sidewalk with a minimum width of 10'-0" as required by the Department of Transportation at the time of the prior approval; and

WHEREAS, the Board notes that the March 22, 2007 DOT letter did not indicate that DOT intends to include the applicant's property in its ten-year capital plan; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original waiver; and

WHEREAS, based upon the above, the applicant has submitted adequate evidence to warrant this approval.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 10, 2007, so that as amended this portion of the resolution shall read: "to permit amendments to the site plan; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received November 19, 2012' one - (1) sheet; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted. (DOB Application No. 402313493)

Adopted by the Board of Standards and Appeals, November 20, 2012.

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**1005-66-BZ**

APPLICANT – Moshe M. Friedman, P.E. for Chelsea Town LLC c/o Hoffman Management, owner.

SUBJECT – Application September 4, 2012 – Extension of Term of a previously granted variance pursuant to Section 60(1b) of the Multiple Dwelling Law which permitted 22 transient parking spaces which expired on May 2, 2012; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 320 West 30<sup>th</sup> Street, south side of West 30th Street, 202' west of 8th Avenue. Block 753, Lot 51, Borough of Manhattan.

**COMMUNITY BOARD #4M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

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**982-83-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192<sup>nd</sup> Street, Block 5513, Lot 27, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

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## 84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.  
SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted professional offices (Use Group 6) in a residential building which expires on September 15, 2012. R4A zoning district.  
PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.

## 85-91-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.  
SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously granted variance for a veterinarian's office, accessory dog kennels and a caretaker's apartment which expired on July 21, 2012; amendment to permit a change to the hours of operation and accessory signage. R3-1 zoning district.

PREMISES AFFECTED – 204-18 46<sup>th</sup> Avenue, south side of 46<sup>th</sup> Avenue 142.91' east of 204<sup>th</sup> Street. Block 7304, Lot 17, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for continued hearing.

## 93-97-BZ

APPLICANT – Eric Palatnik, P.C., for Pi Associates, LLC, owner.

SUBJECT – Application March 13, 2012 – Amendment to a previously granted variance (§72-21) to permit the change in use of a portion of the second floor from accessory parking spaces to UG 6 office use. C4-3 zoning district.

PREMISES AFFECTED – 136-21 Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 11, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Laid over to February 5, 2013, at 10 A.M., for adjourned hearing.

## 173-99-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for LaGuardia Center, owner; LaGuardia Fitness Center LLC, Matrix Fitness Club, lessee.

SUBJECT – Application July 9, 2012 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Matrix Fitness Club*) which expired on March 6, 2011;

Amendment for an increase in floor area at the cellar level; waiver of the Rules. M-1 zoning district.

PREMISES AFFECTED – 43-60 Ditmars Boulevard, southeast side of Ditmars Boulevard on the corner formed by Ditmars Boulevard and 43<sup>rd</sup> Avenue, Block 782, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for continued hearing.

## 302-01-BZ

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

### COMMUNITY BOARD #3BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for decision, hearing closed.

## 189-03-BZ

APPLICANT – Eric Palatnik, P.C., for 830 East 233<sup>rd</sup> Street Corp., owner.

SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.

PREMISES AFFECTED – 836 East 233<sup>rd</sup> Street, southeast corner of East 233<sup>rd</sup> Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for adjourned hearing.

## 141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application August 7, 2012 – Extension of Time to complete construction of a previously approved

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variance (§72-21) permitting the construction of a three-story synagogue (*Congregation Tefiloh Ledovid*) which expired on June 19, 2011; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60<sup>th</sup> Street, corner of 21<sup>st</sup> Avenue and 60<sup>th</sup> Street, Block 5521, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 163-11-A

APPLICANT – FDNY, for Badem Buildings, owner.

SUBJECT – Application October 17, 2011 – Appeal to modify the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 469 West 57<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenue, Block 1067, Lot 4, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for an automatic wet sprinkler system throughout all stairways and public hallways of the subject building; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

You are hereby directed and required to comply with the following order within (30) days.

Install an approved automatic wet sprinkler system throughout the building arranged and equipped as per the Building Code of the NYC Administrative Code Chapter 1 Administration, Section 28.010.1 and the Title 28 Chapter 9 Section BC 903.

Note: Plans shall be filed and approved by the Department of Buildings before work commences.

Authority: NYC Fire Code Chapter 9, Title 29, Section FC 901.4.3 of the Administrative Code, and Chapter 19 Section 487 and Section 488 of the NYC Charter; and

WHEREAS, a public hearing was held on this application on March 27, 2012, after due notice by publication in the City Record, with continued hearings on June 5, 2012,

August 21, 2012 and October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on the north side of West 57<sup>th</sup> Street, between Ninth and Tenth avenues, within an R8 zoning district; and

WHEREAS, the subject site is occupied by a five-story residential building with retail use on the ground floor; and

WHEREAS, the current Certificate of Occupancy Number 096814 (the “Current CO”) reflects the use of the building as a Class A Multiple Dwelling with two Use Group 6 stores on the ground floor; and

WHEREAS, the Fire Department performed an inspection of the building in May 2010 and submitted a Sprinkler System Recommendation Report for the subject site which explained the need for the proposed automatic wet sprinkler system throughout the building; and

WHEREAS, the Fire Department asserts that the proposed modification to the Current CO is necessary in the interest of public safety because fire protection within the subject building is deemed inadequate; and

WHEREAS, specifically, the Fire Department states that an automatic wet sprinkler system is required throughout the stairways and public halls for the following reasons: (1) the building is mixed-use with commercial and residential uses; (2) the building is of non-fireproof construction; (3) the residential units have a single means of egress; (4) building egress is through a single fireproof enclosed stairwell without sprinkler protection; (5) exit doors are often propped open, which undermines fire and smoke integrity of the stairwell; (6) only one of the six lines of apartments has a full walk down fire escape; and (7) without access to fire escapes, any rescue from rear apartments would be required to be via the interior or roof rope; and

WHEREAS, pursuant to Fire Code § 901.4.3, the Fire Department requests to modify the certificate of occupancy to reflect that an automatic wet sprinkler system be installed in the stairway and public hallways of the building; and

WHEREAS, the owner testified at hearing and provided a letter, dated October 15, 2012, stating that the applicant has resolved with the Fire Department to provide a sprinkler system, as requested; and

WHEREAS, based on the above, the Board agrees with the Fire Department that, given the use and construction of the building, its requirement for automatic sprinklers throughout all stairways and public hallways in the building is appropriate; and

WHEREAS, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, supports the Fire Department’s goals to protect life and property at the premises in the event of fire; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the Fire Department initially requested, but it will be approved by

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DOB and the Fire Department prior to installation; and

WHEREAS, however, the Board notes that the property owner has agreed with the Fire Department that it will install the sprinklers within six months of the date of this decision – by May 20, 2013 – and obtain a new certificate of occupancy six months thereafter – by November 20, 2013; and

WHEREAS, accordingly, the Board supports a modification to the certificate of occupancy to reflect that an automatic wet sprinkler system be maintained throughout all stairways and public halls in the subject building.

Therefore it is Resolved that the application of the Fire Commissioner, dated October 12, 2011, seeking the modification of Certificate of Occupancy No. 096814 is hereby granted and the property owner must install the sprinklers by May 20, 2013 and obtain a new Certificate of Occupancy by November 20, 2013.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 21-12-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Pavel Kogan, owner.

SUBJECT – Application January 30, 2012 – Proposed construction of an accessory swimming pool partially within the bed of a mapped street, contrary to General City Law Section 35. R1-2 (NA-1) Zoning District.

PREMISES AFFECTED – 55 Louise Lane, west of intersection of north side of Louise Lane and west side of Tiber Place, Block 687, Lot 281, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated December 28, 2011, acting on Department of Buildings Application No. 500499631, reads:

Construction within the bed of a mapped street is contrary to Section 35 of the General City Law. Therefore, refer to the Board of Standards and Appeals for review; and

WHEREAS, this is an application under General City Law (“GCL”) § 35, to permit the construction of a portion of the existing porch and a swimming pool to the north of the residence located in the bed of a mapped but unbuilt portion of Tiber Place; and

WHEREAS, a public hearing was held on this application on August 14, 2012 after due notice by publication in *The City Record*, with continued hearings on September 11, 2012 and October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, Community Board 2, Staten Island,

recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of Louise Lane, 362.52 feet west of the intersection of the north side of Louise lane and west side of Tiber place, in an R1-2 (NA-1) zoning district; and

WHEREAS, on November 29, 1989, under BSA Cal. Nos. 1384-88-A through 1388-88-A, the Board granted an application pursuant to General City Law § 36 permitting the construction of the subject building and three adjacent buildings which did not front on a legally mapped street; and

WHEREAS, a condition of the grant was that a deed restriction be placed on each property requiring that a Homeowner’s Association be created; and

WHEREAS, by letter dated August 8, 2012, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated March 15, 2012, the Department of Transportation (“DOT”) states that the City does not have title to the mapped street, and that improvement of Tiber Place at this location is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, by letter dated February 17, 2012, the Department of Environmental Protection (“DEP”) states that there are no existing sewers or water mains within the bed of mapped Tiber Place, and Drainage Plan No. PRD-1B & 2B, sheet 4 of 14, calls for a future ten-inch diameter sanitary sewer and a future 12-inch/15-inch diameter storm sewer in the bed of Tiber Place at the intersections with Louise Lane; and

WHEREAS, DEP further states that it requires the applicant to submit the following: (1) a survey/plan showing a 31’-0” wide “Sewer Corridor” in the bed of Tiber Place at the intersection with Louise Lane (along Lot 281 for the installation, maintenance and or reconstruction of the future ten-inch diameter sanitary sewer and the 12-inch/15-inch diameter storm sewer, or otherwise the applicant must amend the Drainage Plan; and (2) proof that the Homeowner’s Association documents are recorded in the City Register of the NYC Department of Finance; and

WHEREAS, in response, the applicant submitted documentation reflecting that the Homeowner’s Association was created and recorded in accordance with BSA Cal. Nos. 1384-88-A through 1388-88-A; and

WHEREAS, as to the requested sewer corridor, the applicant states that providing the 31’-0” wide sewer corridor in the center of Tiber Place would preclude the development of any swimming pool on the site; and

WHEREAS, however, the applicant states that it would agree to amending the drainage plan if necessary in the future in order to address the concerns of DEP; and

WHEREAS, specifically, the applicant represents that it is unlikely that the unbuilt portion of Tiber Place and the sewers referenced by DEP will be developed due to the presence of existing homes, including the subject site and

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Louise Lane, but if the sewers are developed by DEP in the future the applicant agrees to amend the drainage plan accordingly; and

WHEREAS, at hearing, the Board directed the applicant to provide the location of the drywells on the site, which were referenced in BSA Cal. Nos. 1384-88-A through 1388-88-A; and

WHEREAS, in response, the applicant submitted a site plan reflecting that the drywells are located outside of the mapped Tiber Place and outside of the area for the proposed swimming pool; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated December 28, 2011 acting on Department of Buildings Application No. 500499631, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 19, 2012–(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT if/when DEP proposes to install sewer lines in the bed of Tiber Place, the applicant will amend the drainage plan to the satisfaction of DEP;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals November 20, 2012.

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## 102-12-A

APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative, Inc., owner; Michael Mason, lessee.

SUBJECT – Application April 12, 2012 – Proposed reconstruction and enlargement of a single family home not fronting on a mapped street, contrary to General City Law Section 36, and the proposed upgrade of the private disposal system, contrary to the Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 489 Sea Breeze Walk, east side of Sea Breeze Walk, north of Oceanside Avenue, Block

16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 5, 2012, acting on Department of Buildings Application No. 420545351, reads in pertinent part:

For Board of Standards & Appeals Only

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York.

A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

B) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of New York; and

A2- The proposed upgrade of the private disposal system is contrary to the Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, closed and decided on same date; and

WHEREAS, by letter dated October 2, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated April 5, 2012, acting on Department of Buildings Application No. 420545351, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 12, 2012" - one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 151-12-A

APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.

SUBJECT – Application May 9, 2012 –

Appeal challenging the Department of Buildings' determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district.

PREMISES AFFECTED – 231 East 11<sup>th</sup> Street, north side of E. 11<sup>th</sup> Street, 215' west of the intersection of Second Avenue and E. 11<sup>th</sup> Street, Block 467, Lot 46, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative: Commissioner Montanez .....1

THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings (“DOB”) final determination dated April 10, 2012, issued by the First Deputy Commissioner (the “Final Determination”); and

WHEREAS, the Final Determination reads in pertinent part:

The request to lift the Stop Work Order associated with application no. 120213081 to legalize a ham radio antenna above the existing 5 story residential building is hereby denied.

As per ZR 22-21, radio or television towers, non-accessory, are permitted by special permit of the BSA.

The proposed ham radio antenna, approximately 40 feet high, is not customarily found in connection with residential buildings and is therefore not an accessory use to the building; and

WHEREAS, the appeal was brought on behalf of the owner of 231 East 11<sup>th</sup> Street (hereinafter the “Appellant”); and

WHEREAS, a public hearing was held on this application on August 21, 2012 after due notice by publication in *The City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the north side of East 11<sup>th</sup> Street between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has approximately 25'-6" of frontage of East 11<sup>th</sup> Street, a depth of 100 feet, and a total lot area of 2,550 sq. ft.; and

WHEREAS, the site is occupied by a five-story residential building with a height of approximately 58'-0" (the “Building”); a radio tower with a height of approximately 40'-0" is located on the rooftop of the Building (the “Radio Tower”); and

### PROCEDURAL HISTORY

WHEREAS, on November 2, 2009 DOB issued Notice of Violation No. 34805197M charging work without a permit for the Radio Tower contrary to Administrative Code Section 28-105.1; the violation was sustained by an Administrative Law Judge of the Environmental Control Board on October 26, 2010; and

WHEREAS, on or about November 30, 2009, the Appellant filed Job Application No. 120213081 for a permit to legalize the Radio Tower, and on September 30, 2010 DOB issued Permit No. 120213081-01-AL for the Radio Tower; and

WHEREAS, on or about December 16, 2010, DOB reexamined the application and determined that it was approved in error contrary to the Zoning Resolution and on January 13, 2011, DOB issued an Intent to Revoke Approval(s) and Permit(s), Order(s) to Stop Work Immediately letter with an objection that “Proposed antenna is not accessory to the function or principal use of the building”; on or about February 9, 2011, a stop work order was served upon the Appellant and the Radio Tower permit was revoked; and

WHEREAS, on July 12, 2011, DOB denied the Appellant's request to reinstate the permit and rescind the stop work order; the July 12, 2011 determination was renewed by DOB on April 10, 2012, and forms the basis of the Final Determination; and

### RELEVANT ZONING RESOLUTION PROVISIONS

WHEREAS, the Appellant and DOB cite the following Zoning Resolution provisions, which read in pertinent part:

ZR § 12-10 (Accessory Use, or accessory)

An “accessory use”:

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an

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- #accessory building or other structure#, or as an #accessory use# of land) . . . ; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
  - (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use# . . .

An #accessory use# includes...

- (16) #Accessory# radio or television towers...  
\* \* \*

ZR § 22-21 (By the Board of Standards and Appeals)

In the districts indicated, the following #uses# are permitted by special permit of the Board of Standards and Appeals, in accordance with standards set forth in Article VII, Chapter 3...

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

Radio or television towers, non-#accessory#...  
\* \* \*

ZR § 73-30 (Radio or Television Towers)

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 a 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; and

## THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the Radio Tower meets the ZR § 12-10 definition of accessory use; and (2) the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation is subject to limited preemption because it has not "reasonably accommodated" the Appellant's needs; and

### 1. Accessory Use

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed Radio Tower meets the criteria as it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is incidental to and customarily found in connection with a residential building, and (c) the Radio Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Appellant notes that DOB acknowledges that the principal use of the site is as a residential building, and that the owner maintains a residence at the Building; and

WHEREAS, the Appellant states that the owner has

been a licensed "ham" radio operator since 1957, and is in frequent contact with other amateur radio operators around the world; and

WHEREAS, the Appellant notes that the owner is an amateur radio operator (amateur radio license No. WTJGQ) and is not engaged in a commercial use of the Radio Tower; and

WHEREAS, the Appellant submitted a needs analysis prepared by an engineer which concludes that, based on the owner's desired use of the ham radio to engage in communication to Israel and the Middle East, "a significantly taller tower should be utilized to provide optimal coverage," however the proposed Radio Tower with a height of 40 feet "is an acceptable compromise adequate for moderate needs of the amateur radio operator when measured against commonly used engineering metrics;" and

WHEREAS, the Appellant cites to 7-11 Tours, Inc. v. Board of Zoning Appeals of Town of Smithtown, 454 N.Y.S.2d 477, 478 (2d Dept. 1982) for the following discussion of the definition of "accessory use":

"[I]ncidental", when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant...The word "customarily" is even more difficult to apply. Courts have often held that the use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use; and

WHEREAS, the Appellant asserts that the owner's use of the Radio Tower is clearly that of a hobbyist engaged in an avocation from his own residence, and that the owner's hobby as an amateur ham radio operator is both "attendant to" and "commonly, habitually, and by long practice reasonably associated with" the primary use of the Building as a residence; and

WHEREAS, as to whether amateur radio antennas are customarily found in New York City, the Appellant notes that the FCC website lists the names of all amateur radio licensees in the country, and as of May 7, 2012 the site listed a total of 1,086 active amateur radio licensees in Manhattan, while at least 2,235 additional licensees are located in the other four boroughs of New York City; and

WHEREAS, the Appellant asserts that almost all of the licenses reflected on the FCC website are issued to natural persons who enjoy long distance amateur radio communications from their residences; thus, the outdoor radio antennas are commonly in use by radio amateurs in New York City to support international communications; and

WHEREAS, in support of its position that ham radio antennas are customarily found in connection with residences, the Appellant cites to the Oxford English Dictionary definition

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of “customarily” as “in a way that follows customs or usual practices; usually”; and

WHEREAS, the Appellant contends that a use can be “customary” without being very common, such as swimming pools and tennis courts, which are undoubtedly “customarily” found as accessories to residences, regardless of the frequency with which they so appear; and

WHEREAS, the Appellant argues that it is clear that ham radio antennas are “usually” found as accessories to residences, in that when such antennas are found, they are found appurtenant to residences, and the fact that amateur radio towers may be a relatively rare use is irrelevant to the consideration of whether such use is accessory to a residence; and

WHEREAS, at the Board’s request and to support its contention that ham radio antennas are “customarily found in connection with” a residence, the Appellant submitted a series of photographs depicting similar antennas maintained throughout New York City, which provides the borough, underlying zoning district, size, and use group of the residence to which the antenna is accessory, and where available and to the extent possible to obtain such information, it also provides the height of the antennas pictured; and

WHEREAS, specifically, the Appellant submitted photographs of nine other antennas found in Manhattan, the Bronx, Brooklyn, and Queens, which are associated with various types of buildings, from single-family homes to 19-story apartment buildings, and which are found in residential, commercial and manufacturing zoning districts; and

WHEREAS, the Appellant asserts that despite the diversity amongst the buildings depicted, they are all residences, and the ham radio antennas attached to each residence is an accessory use to the main use of the building as a residence; and

WHEREAS, the Appellant represents that the antennas pictured in the photograph array are comparable in size to the Radio Tower, and in some cases, larger than the Radio Tower; and

WHEREAS, the Appellant further represents that there are many more such antennas annexed to other residences throughout the City, however, given the time constraints of the Board’s hearing process and the reluctance of some ham radio operators to expose themselves to possible enforcement action by DOB, the Appellant provided the aforementioned photographs as representative of the type of antenna systems found throughout the City; and

WHEREAS, the Appellant also submitted an array of 23 photographs of antennas from other jurisdictions, many of which are significantly taller than the subject Radio Tower with a height of 40 feet, which the Appellant argues reflects that the subject Radio Tower is modest in size and scope; and

WHEREAS, the Appellant also submitted a copy of a memorandum from then-DOB Commissioner Bernard J. Gillroy, dated November 22, 1955, on the subject of radio towers (the “1955 Memo”), which states that “[n]umerous radio towers have been erected throughout the city for amateur radio stations,” and further states that such towers “may be

accepted in residence districts as accessory to the dwelling;” and

WHEREAS, the Appellant contends that the 1955 Memo serves as evidence that amateur radio towers were numerous throughout New York City and DOB customarily found them as accessory to residences since at least 1955; and

## 2. Preemption

WHEREAS, the Appellant argues that the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB’s interpretation of the Zoning Resolution as it applies to the site is subject to limited preemption because DOB has not “reasonably accommodated” the owner’s needs; and

WHEREAS, the Appellant states that federal laws and FCC regulations strongly favor the maintenance of ham radio equipment such as the Radio Tower, and pre-empt local ordinances which prohibit the maintenance of such equipment, either on their face or as applied; and

WHEREAS, specifically, the Appellant asserts that FCC Opinion and Order PRB-1, Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, 101 FCC 2d 952, 50 Fed. Reg. 38813 (Sept. 25, 1985) (“PRB-1”), requires local authorities to reasonably accommodate amateur radio; and

WHEREAS, the Appellant notes that PRB-1 was codified as a regulation of the FCC at 47 CFR § 97.15(b)(2006), which states:

Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority’s legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.); and

WHEREAS, the Appellant further notes that PRB-1 explains that antenna height is important to effective radio communications as follows:

Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in...Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority’s



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legitimate purpose; and

WHEREAS, the Appellant states that the needs analysis it submitted reflects that the proposed Radio Tower with a height of 40 feet is the minimum bulk necessary to accommodate the owner's desired communications; and

WHEREAS, accordingly, the Appellant argues that DOB's position that the Radio Tower is impermissible as an accessory use due to its height fails to reasonably accommodate the international amateur service communications that the owner desires to engage in, and therefore DOB's position is subject to the limited preemption of PRB-1 and 47 CFR § 97.15(b), and is preempted as applied; and

## DOB'S POSITION

WHEREAS, DOB makes the following primary arguments in support of its revocation of the Permit for the Radio Tower: (1) the Radio Tower is not accessory to the principal residential use and therefore requires a special permit from the Board as a non-accessory radio tower; and (2) the Zoning Resolution provides a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that pursuant to ZR § 22-21, in R8B zoning districts, "radio or television towers, non-accessory" are permitted only "by special permit of the Board of Standards and Appeals," and because no special permit has been issued for the Appellant's radio tower, it must satisfy the ZR § 12-10 definition of "accessory use"; and

WHEREAS, DOB contends that the Radio Tower does not satisfy the ZR § 12-10 definition of accessory use primarily because it does not satisfy the criteria that such a radio tower be "customarily found in connection with" the principal use of the site as a residence; and

WHEREAS, specifically, DOB argues that the proposed Radio Tower is significantly taller and more elaborate than the traditional accessory radio towers (or "aerials") that have been found atop residences for decades in New York City, which are typically used to receive remotely broadcast television and/or AM/FM signals for at-home private listening or viewing and are usually 12 feet or less in height and often affixed directly to chimneys or roof bulkheads; and

WHEREAS, DOB distinguishes traditional "aerials" with the proposed Radio Tower which extends 40 feet above the roof of the Building and must be secured to the roof at multiple points by one-half inch steel wires; and

WHEREAS, DOB further distinguishes the proposed Radio Tower because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals) and is powerful enough to communicate with people living in South America and the Middle East; and

WHEREAS, accordingly, DOB considers the proposed Radio Tower to be categorically distinct from the aerials that are "customarily found in connection with" New York City residences, and argues that the plain text of the Zoning Resolution does not support its use as accessory to the principal use of the zoning lot as a residence; and

WHEREAS, DOB asserts that while the Appellant has

cited a number of cases from other states that support the general notion that ham radio use may be permitted as accessory to a residence, the subject case is controlled by the Court of Appeals decision in Matter of New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998); and

WHEREAS, DOB notes that in Botanical Garden the Board agreed with DOB's determination that a 480-ft. radio tower on the campus of Fordham University adjacent to the New York Botanical Garden was a permitted accessory use for an educational institution that operated a radio station, finding that the radio tower was clearly incidental to and customarily found in connection with an educational institution; and

WHEREAS, DOB states that, in upholding the Board's determination, the Court of Appeals explained that there was "more than adequate evidence to support the conclusion that [the operation of a 50,000 watt radio station with a 480-ft. radio tower] is customarily found in connection with a college or university" and articulated the following standard for determining whether a use is accessory under the Zoning Resolution:

[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question. Botanical Garden, 91 N.Y.2d at 420; and

WHEREAS, DOB notes that the Court also stressed that the accessory use analysis is fact-based and that "[t]he issue before the [Board] was: is a station of this particular size and power, with a 480-foot tower, customarily found on a college campus or is there something inherently different in this radio station and tower that would justify treating it differently" Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, DOB argues that, based on the standard set forth in Botanical Garden, the proposed Radio Tower is not permitted as accessory to the Building; and

WHEREAS, specifically, DOB asserts that the Radio Tower is incompatible with the principal use and the surrounding area, in that it adds an additional 40 feet of height to the Building and its supporting wires and structures, which are permanently affixed, occupy a substantial portion of the roof; thus, when measured by its size in relation to the Building, the Radio Tower is not clearly incidental; and

WHEREAS, DOB further asserts that the Radio Tower is out of context with the subject residential neighborhood, as it is located on an interior lot situated mid-block in a contextual, medium-density residential district on a narrow street of a quintessential East Village block on which no other buildings have aerials approaching the size and complexity of the proposed Radio Tower; and

WHEREAS, DOB argues that, even if the proposed Radio Tower were considered "clearly incidental" to the residential building, the Appellant has also not demonstrated

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that the Radio Tower of this size and power is “customarily found in connection with” New York City residences; and

WHEREAS, as to the photographs and evidence submitted by the Appellant of other radio towers within New York City, DOB asserts that they do not constitute sufficient evidence to establish that a rooftop radio tower with a height of 40 feet is customarily found in connection with the principal use of a residential building located in an R8B zoning district; and

WHEREAS, specifically, DOB states that of the nine photographs provided by the Appellant, five photographs show rooftop radio towers which are not comparable to the subject Radio Tower because they are located on buildings which are 11 to 19 stories tall, and none of which appear to be close to the height of the residential building below the tower; and

WHEREAS, DOB further states that of the remaining four photographs that show radio towers that are located on or near buildings less than 11 stories, only one is located on the roof of a building and that radio tower appears to be approximately half the height of the two-story dwelling; the other three photographs do not appear to show radio towers located on the roofs of the buildings, and the only one of those three that appears to be more than 40 feet in height is a stand-alone radio tower with a height of 80 feet associated with a two-story residential building, and DOB represents that it would not consider such a radio tower to be an accessory use; and

WHEREAS, DOB contends that in order for the subject Radio Tower to satisfy the “customarily found in connection with” criteria, it is not sufficient to provide evidence of other radio towers with similar heights as the subject Radio Tower; rather, the Appellant would have to provide evidence that it is customary to have a radio tower with a height of 40 feet on the rooftop of a four-story building of similar height as the Building, within an R8B zoning district; and

WHEREAS, accordingly, DOB asserts that the evidence submitted by the Appellant is insufficient to establish that a rooftop radio tower with a height of 40 feet located on a four-story residential building in an R8B zoning district is customary, and therefore it does not meet the ZR § 12-10 definition of accessory use; and

WHEREAS, DOB argues that the evidence submitted by the Appellant reflects a similarity between the facts in the subject case and those of BSA Cal. No. 14-11-A (1221 East 22nd Street, Brooklyn), which involved a challenge to DOB’s denial of a permit for an accessory cellar that was nearly as large as the single-family residence to which it was to be appurtenant; and

WHEREAS, DOB asserts that the Board affirmed DOB’s denial in that case, in part, because the appellant failed to demonstrate that such oversized, non-habitable cellars were customarily found in connection with residences, and that in the subject case the Appellant’s evidence similarly fails to demonstrate that a rooftop radio tower with a height of 40 feet is customarily found on a four-story residential building; and

WHEREAS, by letter dated November 8, 2012, the

Department of City Planning (“DCP”) states that it expresses no opinion regarding the merits of the subject case but requests that the Board take the height of the antenna into account in determining whether it is accessory, as it did in BSA Cal. No. 14-11-A, because the size of a use can be relevant to whether it is “incidental to” and “customarily found in connection with” a principal use; and

WHEREAS, as to the 1955 Memo submitted by the Appellant, DOB asserts that the 1955 Memo merely deals with the permitting safety requirements, and specifications for the construction of radio towers, and does not indicate that radio towers are necessarily accessory uses to residences; and

WHEREAS, DOB acknowledges that the Zoning Resolution is clear that some radio towers are accessory, however it is also clear that some radio towers are not accessory, and the 1955 Memo does not state which type of radio towers could be considered accessory or non-accessory; and

WHEREAS, in response to the Appellant’s preemption argument, DOB contends that the Zoning Resolution does provide a “reasonable accommodation” in accordance with federal law; and

WHEREAS, DOB asserts that PRB-1 is a declaratory ruling issued by the FCC requiring that “local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications;” and

WHEREAS, DOB contends that its interpretation of the Zoning Resolution to prohibit the proposed radio tower as accessory to the subject residence as-of-right was proper and consistent with PRB-1, and that it has reviewed the proposal at the highest level and determined that it had no authority to allow the radio tower because a special permit is required pursuant to ZR §§ 22-21 and 73-30; and

WHEREAS, DOB further contends that ZR § 73-30, which authorizes the radio tower by special permit, contemplates the sort of fact-finding and analysis required by PRB-1; accordingly the Zoning Resolution as interpreted by DOB is consistent with the FCC’s “reasonable accommodation” requirement; and  
THE APPELLANT’S RESPONSE

WHEREAS, in response to the arguments set forth by DOB, the Appellant asserts that DOB’s reliance on Botanical Garden and BSA Cal. No. 14-11-A are misplaced; and

WHEREAS, as to Botanical Garden, the Appellant first notes that that case involved a radio tower that was accessory to an educational institution rather than an amateur radio tower that is accessory to a residence, and that to the extent that case is comparable to the subject case, a clear reading shows that it actually supports the Appellant’s position; and

WHEREAS, at the outset, the Appellant states that in Botanical Garden, DOB, the Board, the Supreme Court, the Appellate Division, and the Court of Appeals all found that the Fordham antenna was an accessory use, using arguments similar to those advanced by the Appellant; and

WHEREAS, the Appellant notes that, in upholding the

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lower courts in Botanical Garden, the Court of Appeals rejected the appellant's contention that it is not customary for universities to maintain radio towers of such height, stating that "[t]his argument ignores the fact that the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics." Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, the Appellant contends that Botanical Garden therefore reflects that DOB's contention that the Radio Tower is not an accessory use because of its size conflates use regulation and bulk regulation in a way that is not contemplated by the Zoning Resolution; and

WHEREAS, the Appellant asserts that Botanical Garden also supports its position that the Radio Tower is an accessory use because it is "customarily found in connection with" the principal use, as the Court of Appeals observed:

The specifics of the proper placement of the station's antenna, particularly the height at which it must be placed, are dependent on site-specific factors such as the surrounding geography, building density and signal strength. This necessarily means that the placement of antennas will vary widely from one radio station to another. Thus, the fact that this specific tower may be somewhat different does not render the Board's determination unsupported as a matter of law, since the use itself (i.e., radio operations of this particular size and scope) is one customarily found in connection with an educational institution. Moreover, Fordham did introduce evidence that a significant number of other radio stations affiliated with educational institutions in this country utilize broadcast towers similar in size to the one it proposes. Botanical Garden, 91 N.Y.2d at 422; and

WHEREAS, finally, the Appellant notes that in Botanical Garden the Court of Appeals recognized that, unlike other examples of accessory uses listed in ZR § 12-10, there is no height restriction associated with accessory radio towers and that it would be inappropriate for DOB to arbitrarily restrict the height of such radio towers, as the Court stated that:

Accepting the Botanical Garden's argument would result in the judicial enactment of a new restriction on accessory uses not found in the Zoning Resolution. Zoning Resolution § 12-10 (accessory use) (q) specifically lists "[a]ccessory radio or television towers" as examples of permissible accessory uses (provided, of course that they comply with the requirements of Zoning Resolution § 12-10 [accessory use] [a], [b] and [c]). Notably, no height restriction is included in this example of a permissible accessory use. By contrast, other examples of accessory uses contain specific size restrictions. For instance, Zoning Resolution § 12-10 defines a "home occupation" as an accessory use which "[o]ccupies not more than 25 percent of the total floor area and in no even more than 500

square feet of floor area" (§ 12-10 [accessory use][b][2]). The fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need. Botanical Garden, 91 N.Y.2d at 422-23; and

WHEREAS, accordingly, the Appellant asserts that Botanical Garden reflects that there is no "bright line" height restriction in the Zoning Resolution beyond which an accessory antenna becomes non-accessory, and since there is no law, rule, or regulation which permits DOB to deem the Radio Tower non-accessory on the grounds of its purportedly excessive height, DOB thus makes an error of law in trying to forbid the Appellant's maintenance of the Radio Tower as non-accessory in the absence of a guiding statute; and

WHEREAS, the Appellant contends that DOB's reliance on BSA Cal. No. 14-11-A to support the position that size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use is similarly misguided; and

WHEREAS, specifically, the Appellant notes that in that case, in a discussion of the Botanical Garden case, the Board expressly rejected the use of size as a criterion in evaluating whether radio antennas are accessory uses, noting that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers..."; and

WHEREAS, the Appellant also distinguishes BSA Cal. No. 14-11-A from the subject case in that in the former there was an attempt to promulgate and follow universally applicable standards for determining accessory use in cellars, while in the subject case DOB's determination is limited to this single antenna and not based on any articulated standard; and

WHEREAS, finally, the Appellant argues that BSA Cal. No. 14-11-A is only implicated if it is conceded that the Radio Tower is somehow "too big" for the Building; however, the Appellant asserts that the Radio Tower is in no way "too big" for the site, as it is a standard-sized, if not smaller than standard-sized, amateur radio antenna chosen specifically for the types of communications that the amateur operator desires to engage in, the intended distance of communications, and the frequency band; and

WHEREAS, the Appellant also refutes DOB's contention that, because the Radio Tower both receives and transmits signals (as opposed to merely receiving signals) the subject Radio Tower is somehow not an accessory use; and

WHEREAS, the Appellant asserts that there is absolutely no support in any statute for this proposition, and the Zoning Resolution does not treat antennas differently depending on whether or not they transmit; and

## CONCLUSION

WHEREAS, the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of an

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accessory use to the subject four-story residential building, such that the maintenance of the Radio Tower at the site does not require a special permit from the Board under ZR § 73-30; and

WHEREAS, specifically, the Board finds that the Radio Tower meets the criteria of an accessory use to the residence because it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is clearly incidental to and customarily found in connection with a residential building, and (c) the Radio Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Board agrees with the Appellant that the owner's hobby as an amateur ham radio operator is clearly incidental to the principal use of the site as a residence, and is not persuaded by DOB's argument that the Radio Tower is not clearly incidental to the Building merely because the height of the Radio Tower (40 feet) is comparable to that of the Building (58 feet); and

WHEREAS, the Board finds that the Appellant has submitted sufficient evidence reflecting that, when amateur radio antennas are found, they are customarily found appurtenant to residences, and agrees with the Appellant that the fact that amateur radio antennas are not a common accessory use is not dispositive as to whether or not such use is accessory to a residential building; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals), the Board agrees with the Appellant that the fact that the Radio Tower transmits radio signals is of no import as to whether or not it qualifies as an accessory use; and

WHEREAS, the Board notes that DOB has acknowledged that amateur ham radio antennas can qualify as accessory uses, and since all ham radio operators by definition both receive and transmit radio signals, it appears that DOB has accepted certain amateur radio towers which both receive and transmit radio signals as accessory uses; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it is significantly taller and more elaborate than traditional accessory radio towers, the Board finds that the Appellant has submitted sufficient evidence to establish that radio towers similar to the subject Radio Tower are customarily found in connection with residential buildings in New York City; and

WHEREAS, specifically, the Appellant submitted photographs of nine other ham radio towers maintained throughout the City, and the Board notes that several of the photographs depict radio towers similar in size to the subject Radio Tower; and

WHEREAS, the Board further notes that the Appellant was able to ascertain the height of five of the radio towers for which it submitted photographs, which include: (1) a radio tower with a height of approximately 40 feet located on the rooftop of an 11-story residential building with ground floor

commercial use within an M1-5M zoning district in Manhattan; (2) a radio tower with a height of approximately 50 feet located on the rooftop of a 13-story residential building with ground floor commercial use within an R10-A zoning district in Manhattan; (3) a radio tower with a height of approximately 28 feet located on the rooftop of a nine-story residential building within an R8B zoning district in Manhattan; (4) a radio tower with a height of approximately 80 feet located in the backyard of a two-story residential building within an R4-1 zoning district in Brooklyn; and (5) a radio tower with a height of 15 feet located on the rooftop of a two-story residential building within an R2A zoning district in Queens; and

WHEREAS, the Board considers the photographs submitted by the Appellant to be a representative sample of the amateur ham radio antennas maintained by the approximately 3,321 licensed ham radio operators located throughout the City, and finds that the photographs submitted to the Board, in particular those of the rooftop radio towers in Manhattan with heights of 40 feet and 50 feet, respectively, serve as evidence that radio towers similar in height to the subject Radio Tower with a height of 40 feet are customarily found in connection with residential buildings in the City; and

WHEREAS, the Board is not convinced by DOB's argument that these radio towers cannot be relied upon as evidence that radio towers similar in size to the subject Radio Tower are customarily found in connection with residential buildings merely because they are located on taller buildings than the subject Building; and

WHEREAS, the Board does not find the height of the building upon which a radio tower is to be located to be the controlling factor as to whether or not that radio tower is deemed to be an accessory use; and

WHEREAS, as to DOB's contention that the subject case is controlled and consistent with Botanical Garden, the Board acknowledges that the case reflects that it is appropriate to take the overall character of the particular area into consideration when determining whether an accessory use is clearly incidental to and customarily found in connection with the principal use, however, the Board agrees with the Appellant that the facts of the case actually weigh in favor of the Appellant's position; and

WHEREAS, in particular, the Board notes that DOB is requesting that the Board rely on Botanical Garden to support the position that the subject Radio Tower is not an accessory use, despite the fact that the ultimate holding in Botanical Garden was that the radio tower in question qualified as an accessory use based on similar arguments advanced by the Appellant in the subject case; and

WHEREAS, the Board agrees with the Appellant that the Court's determination that "the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics" Botanical Garden, 91 N.Y.2d at 421, and "[t]he fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need" Botanical Garden, 91

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N.Y.2d at 422-23, weighs in favor of the Radio Tower as an accessory use, as the Appellant submitted a needs analysis which reflects that the antenna height of 40 feet is based upon an individualized assessment of the owner's needs to communicate with Israel and the Middle East and is the minimum necessary height required for the ham radio tower to function properly in communicating with these areas of the world; and

WHEREAS, the Board also does not find support in Botanical Garden for DOB's contention that the Radio Tower is non-accessory merely because there are no similarly-sized radio towers located on similarly-sized buildings in the immediately surrounding block, as in that case Fordham was the only university in the surrounding area and the Court supported the Board's consideration of the custom and usage of other universities which were not located near the site in reaching its determination that such radio antennas were customarily found as accessory uses to universities; and

WHEREAS, accordingly, the Board notes that while Botanical Garden set forth a standard that the overall character of the area should be taken into consideration in the accessory use analysis, the facts of that case itself reflect that such a standard does not require that there be an identical radio tower accessory to an identical building in the immediately surrounding area, as DOB appears to be requiring in the instant case; and

WHEREAS, the Board agrees with the Appellant that the fact that no other buildings on the immediate block have similar radio towers is not dispositive of whether the subject Radio Tower is an accessory use, and finds that the Appellant has submitted evidence that rooftop radio towers with heights of 40 feet are "customarily found in connection with" residential buildings in New York City; and

WHEREAS, as to BSA Cal. No. 14-11-A, the Board agrees with the Appellant that that case is also distinguishable from the subject case, as it was based on significantly different facts and in its decision the Board specifically noted that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers..."; and

WHEREAS, the Board further agrees with the Appellant that, unlike the subject case, BSA Cal. No. 14-11-A involved DOB's attempt to promulgate and follow a universally applicable standard for determining whether a cellar was an accessory use, which has since been memorialized in Buildings Bulletin 2012-008; and

WHEREAS, specifically, the Board notes that in BSA Cal. No. 14-11-A, DOB sought to apply a single objective standard to all cellars in every zoning district, while in the subject case DOB is proposing to make a case-by-case analysis of each amateur ham radio tower that is constructed in the City and make a discretionary determination as to whether it is accessory based upon factors such as the height of the radio tower, the height of the associated building, the prevalence of similar radio towers on similar buildings in the

immediately surrounding area, the character of the surrounding area, and other subjective criteria; and

WHEREAS, the Board agrees with the Appellant that DOB has provided no provision of the Zoning Resolution or any other law, rule, or regulation which sets forth a standard for finding the subject Radio Tower non-accessory solely based upon its height; and

WHEREAS, the Board considers the lack of an objective standard for determining whether an amateur ham radio tower of a given height is accessory to be problematic and prone to arbitrary results, and while the Board does not make a determination as to whether amateur ham radio towers of any height may qualify as accessory, it recognizes that establishing a bright line standard for the permissible height of accessory radio towers may require an amendment to the Zoning Resolution or the promulgation of a Buildings Bulletin, as was the case in BSA Cal. No. 14-11-A; and

WHEREAS, the Board agrees with DCP that the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; however, it finds that in the case of amateur radio towers, unlike cellars and certain other uses, there is no articulated standard to guide DOB in determining at what height a particular radio tower becomes non-accessory; and

WHEREAS, as to the Appellant's argument that in not accepting the Radio Tower as an accessory use DOB has failed to "reasonably accommodate" the owner's needs contrary to federal laws and regulations, the Board recognizes that federal laws and FCC regulations favor the maintenance of ham radio equipment such as the Radio Tower and preempt local ordinances which prohibit the maintenance of such equipment; and

WHEREAS, however, because the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of accessory use, the Board deems it unnecessary to make a determination on the preemption issue in order to reach a decision on the merits of the subject appeal; therefore, the Board finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, the Radio Tower satisfies the ZR § 12-10 criteria for an accessory use to the subject residential building.

*Therefore it is Resolved* that the subject appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated April 10, 2012, is hereby granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 247-12-A

APPLICANT – Deidre Duffy, P.E. for Breezy Point Cooperative, Inc., owner; Timothy and Barbara Johnson, lessee.

SUBJECT – Application August 10, 2012 – Proposed construction of a single family home located in the bed of a mapped street, contrary to General City Law Section 35, and private disposal system is located in the bed of a mapped street, contrary to Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 659 Highland Place, east side of Highland Place, 222.5' north of 12<sup>th</sup> Avenue. Block 16350, Lot 300. Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No. 420575381, reads in pertinent part:

- A1- The site and the building to be reconstructed lie partially within the bed of a mapped street, contrary to Article, Section 35 of the General City Law; and
- A2- The proposed upgraded private disposal system in the bed of a mapped street contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, hearing closed, and then to decision on the same date; and

WHEREAS, by letter dated September 27, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, by letter dated August 30, 2102, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 26, 2012, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No.420575381, is

modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 10, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 248-12-A

APPLICANT – Deidre Duffy, P.E., for Breezy Point Cooperative, Inc., owner; Gerard McGlynn, lessee.

SUBJECT – Application August 10, 2012 – Proposed building is not fronting a mapped street, contrary to General City Law Section 36, is located in the bed of a mapped street, contrary to General City Law Section 35, and private disposal system is located in the bed of a mapped street, contrary to Department of Buildings' policy. R4 zoning district.

PREMISES AFFECTED – 45 Tioga Walk, east side of Tioga Walk, 68' south of West End Avenue. Block 16350, Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No. 420573962, reads in pertinent part:

- A1- The site and the building to be reconstructed lie partially within the bed of a mapped street, contrary to Article, Section 35 of the General

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City Law; and

A2- The proposed upgraded private disposal system in the bed of a service lane is contrary to Department of Buildings policy; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, hearing closed and then to decision on the same date; and

WHEREAS, by letters dated September 27, 2012 and October 10, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections provided that the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and

WHEREAS, by letter dated August 30, 2102, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated October 3, 2012, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Queens Borough Commissioner, dated July 11, 2012, acting on Department of Buildings Application No.4205753962, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 10, 2012”-one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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**45-03-A thru 62-03-A & 64-03-A**

APPLICANT – Joseph Loccisano, P.C., for Willowbrook Road Associates LLC, owner.

SUBJECT – Application October 3, 2011 – Proposed construction of a single-family dwelling which is not fronting on a legally mapped street and is located within the bed of a mapped street, contrary to Sections 35 and 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – Hall Avenue, north side of Hall Avenue, 542.56’ west of the corner formed by Willowbrook Road and Hall Avenue, Block 2091, Lot 60, 80, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for adjourned hearing.  
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**119-11-A**

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application August 17, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning regulations in effect on July 14, 2005. R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for deferred decision.  
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**140-12-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Foster Road Development LLC, owner.

SUBJECT – Application April 30, 2012 – Proposed construction of a two-family dwelling located in the bed of a mapped street, contrary to General City Law Section 35. R3A zoning district.

PREMISES AFFECTED – 69 Parkwood Avenue, east side of Parkwood Avenue, 200'south of intersection of Parkwood and Uncas Avenues. Block 6896, Lot 120(tent), Borough of Staten Island.

**COMMUNITY BOARD #3SI**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for decision, hearing closed.  
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## 142-12-A

APPLICANT – Sheldon Lobel, P.C., for 108-59 Ditmas Boulevard, owner.

SUBJECT – Application May 3, 2012 – Amendment of a previously approved (BSA Cal No. 187-99-A) waiver of the General City Law Section 35 which permitted the construction of a two family dwelling in the bed of a mapped street (24th Avenue). The amendment seeks to construct a community facility building. R3-2 zoning district.

PREMISES AFFECTED – 24-02 89<sup>th</sup> Street, between Astoria Boulevard and 23<sup>rd</sup> Avenue, Block 1100, Lot 101, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 10 A.M., for continued hearing.

## 144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f). PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for continued hearing.

## 145-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29<sup>th</sup> LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal challenging the determination of the Department of Buildings requiring the owner to obtain approval from the Landmarks Preservation Commission, prior to reinstatement and amendments of the permits. R8B zoning district.

PREMISES AFFECTED – 339 West 29<sup>th</sup> Street, north side of West 29<sup>th</sup> Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING

**TUESDAY AFTERNOON, NOVEMBER 20, 2012**  
**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

## ZONING CALENDAR

### 156-11-BZ

#### CEQR #12-BSA-028X

APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon’s Church owners.

SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon’s Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-2), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district. PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165<sup>th</sup> Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.

### COMMUNITY BOARD #4BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 5, 2011, acting on Department of Buildings Application No. 220137233, reads, in pertinent part:

1. Proposed floor area ratio (FAR) exceeds the maximum permitted pursuant to ZR 23-145, 24-161, and 77-22
2. Proposed lot coverage exceeds the maximum permitted pursuant to ZR 23-145
3. Proposed Quality Housing building does not provide required setbacks of 10 and 15 feet above maximum base height in an R8 district along wide and narrow streets respectively, pursuant to ZR 23-633(b)
4. Proposed number of dwelling units exceeds maximum permitted pursuant to ZR 23-22 and 24-20; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio (“FAR”), lot coverage, setback, and density regulations



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and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, and 24-20; and

WHEREAS, the application is brought on behalf of St. Simeon's Episcopal Church and the Canterbury Heights Development Corporation (CHDC) a not-for-profit organization affiliated with St. Simeon's, the owner of the site and the occupant of the proposed house of worship; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Bronx, recommends approval of the application and cites the need for affordable housing in the area; and

WHEREAS, the applicant submitted letters of support from New York State Assemblywoman Vanessa Gibson and the Mount Hermon Baptist Church; and

WHEREAS, the subject site is located on a triangular corner lot, which is its own small city block, bounded by East 165<sup>th</sup> Street, Carroll Place, and Sheridan Avenue and has a total area of 5,154 sq. ft.; and

WHEREAS, the majority of the zoning lot (95.8 percent) is located within 100 feet of East 165<sup>th</sup> Street; and

WHEREAS, the site was formerly occupied by St. Simeon's Episcopal Church, in a building that was deemed unsafe in 1998 and, despite attempts to rehabilitate it, was eventually demolished in 2003 due to withdrawal of insurance coverage; the site is currently vacant; and

WHEREAS, the applicant proposes to occupy the 12-story building (with a total height of 117 feet) with community facility use at the cellar and ground floor level, for St. Simeon's, including the church sanctuary and an accessory pastor's apartment; and the 11 upper floors will be occupied by residential use, including 50 affordable dwelling units ranging from studios to three-bedroom units; and

WHEREAS, the applicant states that ten of the residential units (20 percent) will provide supportive housing for the formerly homeless; supportive social services will be provided by Comunilife, an institution that provides supportive services including those for mental health counseling and benefits management for the formerly homeless; and

WHEREAS, the conditions which trigger the need for the variance are (1) floor area of 49,072 sq. ft. (9.52 FAR) (36,851 sq. ft. (7.15 FAR) is the maximum permitted); (2) the portion of the first floor occupied by community facility use complies with lot coverage regulations, but the residential floors above have a lot coverage of 85 percent (80 percent is the maximum permitted lot coverage); (3) the absence of setbacks above the maximum permitted base height of 85 feet (setbacks of 10 feet from the wide street

and 15 feet from the narrow streets are required above the base height); and (4) the provision of 50 dwelling units (density regulations limit the number of units to 44); and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the triangular shape; and (2) the slope and poor soil conditions; and

WHEREAS, as to the shape, the applicant states that the site is irregularly-shaped with three frontages; and

WHEREAS, specifically, the applicant states that the odd shape of the site constrains the floor plate because the ratio of street frontage is so high and the angles of the intersections of the streets do not support efficient standard building design; and

WHEREAS, the applicant asserts that there are premium façade costs associated with having all of the exterior surface area of the building be a street frontage such as the need for a greater degree of fenestration; and

WHEREAS, the applicant asserts that due to inefficiencies of constructing on an irregularly-shaped site, the lot area of 5,154 sq. ft. could accommodate approximately three fewer dwelling units than if the lot were regularly-shaped; and

WHEREAS, the applicant represents that the as of right alternative would only allow for 37 dwelling units which is well below the minimum 50 units required to qualify for Low-Income Affordable Marketplace Program (LAMP) financing, as will be discussed in more detail below; and

WHEREAS, additionally, the applicant represents that if the lot coverage and setback regulations were followed strictly, the as of right floorplate would narrow significantly above a height of 85 feet and allow for only one unit on floors nine through twelve; and

WHEREAS, due to the shape and the requirement for setbacks at each of the three frontages, the upper floors of any building would be significantly constrained as at a height of 85 feet, a setback of 10'-0" is required at East 16<sup>th</sup> Street and setbacks of 15'-0" are required at Carroll Place and Sheridan Avenue; and

WHEREAS, the applicant asserts that a standard shaped lot with only one or two street frontages would not be similarly constrained by the setback requirements; and

WHEREAS, the applicant proposes a larger floor plate, in conflict with lot coverage requirements so that a larger amount of floor area can be accommodated on the lower floors, where a setback would not be required; and

WHEREAS, as to the uniqueness of the shape, the 400-ft. radius diagram reflects that the site is one of two triangular sites in the area and is the smaller of the two; and

WHEREAS, the diagram reflects that the subject site is the only site so affected by the curve of Carroll Place which, along with the intersections of Sheridan Avenue and East 165<sup>th</sup> Street, creates the unique triangular block, with one curved side that is occupied solely by the subject site; the subject site is the only such triangular block and the smallest

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block in the study area; and

WHEREAS, as to the slope and soil, the applicant asserts that the site has a change in grade varying in elevation from 72 feet to 82 feet and with bedrock encountered at varying depths of 12 feet to 28 feet below grade; and

WHEREAS, the applicant asserts that the presence of bedrock makes construction of the foundation more costly as the removal of bedrock is more expensive than typical soil excavation; and

WHEREAS, the applicant states that the geotechnical report indicates a variety of sub-grade conditions including areas of pre-existing fill and old concrete foundations; and

WHEREAS, the applicant represents that there are additional costs associated with the labor and materials for an uneven foundation and the removal of unsuitable fill materials below proposed footings; and

WHEREAS, the applicant asserts that it will employ a slab on grade foundation with spread footing, a strategy that requires the minimization of the differential settlement; and

WHEREAS, the applicant asserts that additional floor area is required in help balance out the premium costs associated with construction on the triangular lot with compromised soil conditions; and

WHEREAS, the applicant states that in addition to the site's unique physical conditions, CHDC has specific programmatic needs, which require (1) a permanent house of worship for St. Simeon's, (2) community services, and (3) affordable housing; and

WHEREAS, CHDC's mission as set forth in its mission statement is to "support and strengthen individuals, families, neighborhoods and communities with the means that would enable them to live their lives in the best way possible" through affordable and better housing, child care and educational services, and social and psychological services; and

WHEREAS, the applicant states that it will receive financing for the proposal from the New York City Housing Development Corporation, LAMP, as well as New York City Department of Housing Preservation and Development's Low Income Program (LIP); and

WHEREAS, the applicant states that the proposal will also be partially funded by grants from the Office of the Bronx Borough President and Councilmember Helen Foster; and

WHEREAS, the applicant represents that the building program is determined in part by the requirements of the government funding sources concerning building design and unit count; and

WHEREAS, the applicant states that in order to be eligible for financing from LAMP, the minimum number of residential units is 50, of which 50 percent must be two-bedroom units or larger and each unit must comply with HPD's design guidelines, including suggested minimum floor area per unit type; and

WHEREAS, accordingly, the proposal reflects a total of 50 affordable housing units, including one, two, and

three-bedroom apartments and studios for low-income families and single adults; and

WHEREAS, of the 50 units, seven will be studio apartments, 18 will be one-bedroom apartments, 21 will be two-bedroom apartments and four will be three-bedroom apartments; and

WHEREAS, as noted, an as-of-right building at the site that complies with floor area, lot coverage and height and setback regulations would allow for only 37 dwelling units, 13 units below the minimum required to qualify for LAMP financing; and

WHEREAS, accordingly, the applicant requires the waivers of residential floor area, setback, lot coverage, and density regulations; and

WHEREAS, the applicant states that LIP financing requires that at least 20 percent of the units be set aside for formerly homeless households and that a social services plan be approved to serve such residents; and

WHEREAS, the applicant states that, in accordance with LIP financing, ten of the 50 units will be designated for formerly homeless and Comunilife and CHDC will provide social services for building residents and the broader East Concourse community; and

WHEREAS, the applicant states that St. Simeon's need to rebuild its house of worship on the historic site of its church is fulfilled through its partnership with CHDC and the plan to construct a building which can accommodate both the new church space and the affordable housing; and

WHEREAS, the space available for church use includes a 1,081 sq. ft. multipurpose room in the cellar, which will accommodate meetings and social gatherings that may not be appropriate in the sanctuary; and

WHEREAS, the proposal also reflects that the first floor will contain a pastor's apartment, giving the church's pastor full-time access to church facilities and supporting his role in helping the church and building residents; and

WHEREAS, the cellar will be occupied by mechanical rooms and the tenants' laundry room, church offices, and a church multipurpose room; and

WHEREAS, the Board accepts the applicant's assertion that there are mutual benefits of St. Simeon's and CHDC occupying the same building due to an overlap of uses, programming, and leadership; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of St. Simeon's and CHDC's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since CHDC and St. Simeon's are both not-for-profit organizations and the proposed development will be in furtherance of their not-for-profit missions; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be

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detrimental to the public welfare; and

WHEREAS, the applicant states that the proposed 12-story community facility and residential building is consistent with the character of the surrounding area as the use and total height of the proposed building are permitted as-of-right; and

WHEREAS, the applicant asserts that the proposed bulk results in an envelope that is consistent with existing development within the neighborhood; and

WHEREAS, the applicant notes that the site occupies its own block and the proposed building with its non-complying lot coverage and setback conditions is, thus, not immediately adjacent to any other sites; and

WHEREAS, specifically, the applicant states that there are several tall buildings within 400 feet of the site, including a 23-story multiple dwelling building located at 1020 Grand Concourse and a ten-story multiple dwelling building located at 1000 Grand Concourse across Carroll Place; and

WHEREAS, additionally, the applicant states that ten of the 21 multiple dwelling buildings located within a 400-ft. radius have floor area well above the 49,072 sq. ft. for the proposed building; and

WHEREAS, the applicant also asserts that the percentage by which the proposed 9.52 FAR exceeds the maximum permitted FAR is consistent with the bulk of other buildings in the study area that exceed their maximum allowable FAR; and

WHEREAS, the applicant states that of the 26 buildings located within 400 feet of the site, 16 exceed the maximum permitted FAR and nine exceed the maximum allowable FAR in their respective districts by more than 20 percent; and

WHEREAS, the applicant submitted photographs and a 400-ft. radius diagram to support these assertions; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, at hearing, the Board asked the applicant to provide additional evidence that the proposed floor area is compatible with the surrounding area; and

WHEREAS, in response, the applicant stated that there is a 23-story building complex (Executive Towers) at 1020 Grand Concourse on the corner of East 165<sup>th</sup> Street with an FAR their architect consultant assesses to be 9.10 (although Oasis notes it be 6.92); and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site and the programmatic needs of CHDC and St. Simeon's; and

WHEREAS, the applicant states that there is no viable lesser variance that would allow for 50 units that conform to certain size and design requirements required by funding sources, particularly since the as of right scenario would

only allow for 37 units; and

WHEREAS, accordingly, the Board finds that the proposal reflects the minimum necessary to accommodate the applicant's programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.2 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA028X, dated July 24, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio, lot coverage, setback, and density regulations and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, and 24-20, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 19, 2012" - Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 12 stories, a residential floor area of 44,988 sq. ft., a community facility floor area of 4,084 sq. ft., and a total floor area of 49,072 sq. ft. (9.52 FAR), a total height of 117 ft., and lot coverage of 85 percent above the first floor, all as illustrated on the BSA-approved plans;

THAT there will be no change in use or ownership of the building without the prior review and approval of the

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Board;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 185-11-BZ

### CEQR #12-BSA-047K

APPLICANT – Eric Palatnik, P.C., for 2000 Stillwell Avenue, LLC, owner.

SUBJECT – Application December 8, 2011 – Variance (§72-21) to permit parking accessory to an adjacent, as-of-right retail development (*Walgreens*), contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 2538 85<sup>th</sup> Street, north intersection of 86<sup>th</sup> Street and Stilwell Avenue. Block 6860, Lot 21. Borough of Brooklyn.

### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 1, 2011, acting on Department of Buildings Application No. 320136777, reads in pertinent part:

The proposed accessory commercial parking which rests within an R5 zoning district, which is accessory to the proposed use group 6 retail development on adjacent lots 38, 32, and 28, which themselves rest within a C8-2 zoning district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R5 portion of the site, which is contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in the *City Record*, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and

Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommended approval of the application; and

WHEREAS, the site (Lot 21) is part of a larger triangular site formed by the intersection of 86<sup>th</sup> Street and Stillwell Avenue; and

WHEREAS, the site comprises four tax lots (the “Larger Site”); Lots 28, 32, and 38 occupy the southwest portion of the site and are within a C8-2 zoning district and the subject Lot 21, which occupies the northeastern portion of the site, and is within an R5 zoning district; and

WHEREAS, the applicant represents that the lots were not in common ownership prior to 1961, but that portions of the larger site have been in common ownership since then and are in common ownership today; and

WHEREAS, the applicant represents that the proposal for the site is all as of right except for the parking within the R5 zoning district and, thus, only Lot 21 (the “Parking Lot Site”) is the focus of the application; and

WHEREAS, the Parking Lot Site has a lot area of 5,845 sq. ft., with 145 feet of frontage on Stillwell Avenue and five feet of frontage on 85<sup>th</sup> Street; it has a depth of 100 feet from 85<sup>th</sup> Street and 11 feet from its southern lot line; and

WHEREAS, the Larger Site is currently vacant, pending the construction of a one-story Walgreen’s drugstore with 7,982 sq. ft. of floor area and 12 accessory off-street parking spaces on the portion of the site within the C8-2 zoning district; and

WHEREAS, the applicant notes that neither the parking spaces on the C8-2 portion of the site nor on the R5 portion of the site are required by zoning regulations because the parking requirement is not in effect for fewer than 25 spaces; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the Parking Lot Site in conformance with applicable regulations: (1) the site has an irregular triangular shape, (2) the site is adjacent to the elevated train, and (3) the site’s only frontage is on heavily-trafficked Stillwell Avenue; and

WHEREAS, as to the shape of the site, the applicant states that the triangular shape of the Larger Site and the triangular shape of the Parking Lot Site, individually, are both attributed to the diagonal intersection of Stillwell Avenue; and

WHEREAS, the applicant states that the shape of the Parking Lot Site creates the condition of varying lot widths ranging from five feet at 85<sup>th</sup> Street to 111 feet at its base and that Stillwell Avenue runs at an approximate 60 degree angle along the eastern frontage of the site; and

WHEREAS, the applicant asserts that due to the irregular shape of the site, a building that complied with all zoning regulations would only be able to accommodate approximately one-half of the available floor area; and

WHEREAS, as to the uniqueness of the shape, the applicant states that although Stillwell Avenue’s orientation has left many sites on its western side with an irregular shape, other similarly situated sites are either located within a different zoning district (such as an overlay which allows

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commercial use), contain existing non-conformances or non-compliances, or have frontage on a side street, which promotes viability as all are occupied by uses including a pre-school, a mixed-use residential building with ground floor retail, and a non-conforming two-story office building; and

WHEREAS, as to the proximity to the elevated train, the applicant notes that the MTA's D train line is directly adjacent to the site and follows 86<sup>th</sup> Street from the northwest and turns onto Stillwell Avenue and creates loud noise; and

WHEREAS, as to the location on a heavily-trafficked street, the applicant asserts that the intersection of Stillwell Avenue and 86<sup>th</sup> Street is occupied entirely by commercial use; and

WHEREAS, the applicant asserts that the elevated train and the frontage on Stillwell Avenue are incompatible conditions for viable new residential development; and

WHEREAS the applicant states that DOB records do not show that there has been any building constructed on the Parking Lot Site, historically; and

WHEREAS, the applicant represents that most recently, the Parking Lot Site was used in association with the adjacent service station that formerly occupied the site; and

WHEREAS, the applicant represents that the Parking Lot Site is the only site in the vicinity that is vacant, irregularly-shaped, within close proximity to the elevated train, and with its sole frontage on Stillwell Avenue; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical conditions when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right conforming three-family residential building with .57 FAR, (2) a three-family residential building with a non-complying side yard and 1.06 FAR, (3) a three-family residential building with a non-complying side yard and .7 FAR, and (4) the proposed accessory parking lot; and

WHEREAS, the applicant concluded that only the proposal would result in a reasonable return due to the physical conditions of the site; and

WHEREAS, based upon its review of the submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use of the site will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that Stillwell Avenue is occupied by many commercial uses, even on sites which are within the R5 zoning district as well as in the C2-3 (R5B) and C8-2 zoning districts; and

WHEREAS, the applicant states that the adjacent residential use does not have lot line windows so the impact of

the parking lot is reduced; and

WHEREAS, to provide a buffer between the Parking Lot Site and the adjacent residential use, the applicant proposes to include a landscaped area with a width of five feet and a board on board fence with a height of six feet along the shared property line to provide screening; and

WHEREAS, further, although no interior landscaping is required since the parking lot is less than 36 parking spaces, the applicant proposes to include 11 trees at the shared lot line as well as six trees at the perimeter, and a drainage plan, both conditions as required by ZR § 37-921; and

WHEREAS, the Board notes that the proposal is to allow a portion of the accessory parking lot – ten parking spaces - to be located within the R5 zoning district; and

WHEREAS, the applicant notes that the proposed parking lot will be adjacent to the as-of-right parking lot on the C8-2 portion of the site to be occupied by the drugstore; and

WHEREAS, at hearing, the Board questioned whether the two curb cuts on 86<sup>th</sup> Street would interfere with pedestrian traffic; and

WHEREAS, in response, the applicant explained the need for two curb cuts to accommodate efficient site circulation with one curb cut limited to entry and the other to egress; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, accordingly, the Board finds that the proposal to allow ten accessory parking spaces on a site adjacent to a conforming drugstore is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA047K, dated December 14, 2011; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and

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Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a negative declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within a C8-2 zoning district and partially within an R5 zoning district, an accessory parking lot to a Use Group 6 drugstore on the R5 portion of the site, which is contrary to ZR § 22-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 19, 2012"- (\*\*\*) sheets and *on further condition*:

THAT the use of the parking lot on Lot 21 is limited to accessory parking to the adjacent Use Group 6 use on Lots 28, 32, and 38;

THAT an opaque fence of six feet in height shall be installed and maintained on the portions of the site adjacent to residential uses;

THAT landscaping shall be planted and maintained as per the BSA-approved plans;

THAT all exterior lighting within the parking area shall be directed away from adjacent residential use;

THAT the above conditions will be noted on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 7-12-BZ

### CEQR #12-BSA-063M

APPLICANT – Eric Palatnik, P.C., for 419 West 55<sup>th</sup> Street Corp., owner; Katsam Holding, LLC, lessee.

SUBJECT – Application January 17, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Revolutions 55*). C6-2/R8 zoning district.

PREMISES AFFECTED – 419 West 55<sup>th</sup> Street, between 9<sup>th</sup> and 10<sup>th</sup> Avenues, Block 1065, Lot 21, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 23, 2011, acting on Department of Buildings Application No. 120886817, reads in pertinent part:

The proposed physical culture establishment in a C6-2/R8 zoning district is contrary to Zoning Resolution Section 32-15 and therefore must be referred to the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-2 (R8) zoning district within the Special Clinton District, the operation of a physical culture establishment (PCE) on a portion of the cellar level of a seven-story mixed-use building contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on April 24, 2012, after due notice by publication in *The City Record*, with continued hearings on June 5, 2012, July 10, 2012, August 21, 2012, and October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the Board of Directors of the co-op at 419 West 55<sup>th</sup> Street and, separately, the shareholder of the apartment directly above the space proposed to be occupied by the PCE provided testimony expressing concerns about (1) noise and vibration from the PCE use; (2) safety and security related to the building's common space and visitors to the PCE; (3) oversight of the architectural (primarily acoustical) plans to insure compliance; and

WHEREAS, specifically, the co-op and the shareholders recommend that (1) there be strict measures to limit the volume of sound equipment and that acoustical measures be installed and maintained to limit sound; (2) safety measures be

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installed to monitor the entrance and egress to the PCE; and (3) the building's architect be granted access to review the progress and insure proper installation of acoustical measures during construction; and

WHEREAS, the co-op and shareholders also recommend that there be conditions in the approval limiting the hours of operation and occupancy, and noting security and sound measures; and

WHEREAS, the subject site is located on the north side of West 55<sup>th</sup> Street in a C6-2 (R8) zoning district within the Special Clinton District; and

WHEREAS, the proposed PCE will occupy 2,590 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as a spinning studio by the name Revolutions55; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, in response to the co-op's and the shareholders' concerns, the applicant proposes the following measures related to (1) noise and vibration from the PCE use; and (2) safety and security related to the building's common space and visitors to the PCE; and

WHEREAS, as to noise and vibration, the applicant proposes to include (1) double-door sound locks at all exits; (2) a sound limiter installed in a locked equipment closet within the PCE manager's office; (3) ductwork, exhaust grilles, and fans installed with acoustic isolation measures; (4) ceilings, walls, and floors of the PCE constructed with acoustical measures as reflected on the acoustical details plans; and (5) vibration-isolated speakers hung from the ceiling; and

WHEREAS, as to safety and security, the applicant proposes that (1) the access to commercial storage closets and laundry closet is restricted to staff use only; (2) there will be a "No entry" door with a swipe card system at the pull side and panic bar at the push side of the door so that the necessary means of egress is provided but that visitors to the PCE cannot exit without setting off an alarm; and (3) there will be seven new security cameras installed to monitor activity within the PCE space and at certain key spots around the perimeter of the cellar; and

WHEREAS, in response to the neighbors' concerns, the applicant also agrees to limit the occupancy of the PCE to 51 bicycles and to limit the hours of operation to Monday to Friday 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 7:30 a.m. to 7:00 p.m.; and

WHEREAS, the Board notes that the applicant has modified its plans in response to the concerns raised by the co-op and the shareholders, but that there are certain matters

upon which there has not been a complete resolution; and

WHEREAS, the Board notes that the safety and acoustical measures to be installed appear to address the primary concerns and are consistent with the measures the Board has seen proposed for similar facilities; and

WHEREAS, the Board notes, however, that there are certain other concerns that are beyond the scope of the PCE application and, thus, must be addressed by a separate agreement between the PCE and the building/shareholders such as whether the oversight of the security cameras and alarms is satisfactory and what form the review of the construction will take; and

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2 and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.12BSA063M, dated November 1, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration action prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C6-2 (R8) zoning district within the Special Clinton

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District, the operation of a physical culture establishment on a portion of the cellar level of a seven-story mixed-use building contrary to ZR § 32-15; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 19, 2012” - Eight (8) sheets and *on further condition*:

THAT the term of this grant will expire on November 20, 2022;

THAT the number of bicycles will be limited to 51;

THAT the hours of operation will be limited to Monday to Friday 6:00 a.m. to 10:00 p.m. and Saturday and Sunday, 7:30 a.m. to 7:00 p.m.

THAT the sound limiter will be placed in a location not accessible to the public;

THAT acoustical attenuation measures will be installed and maintained as reflected on the BSA-approved plans;

THAT there will be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 45-12-BZ CEQR #12-BSA-082K

APPLICANT – Moshe M. Friedman, P.E., for Bais Sina, owner.

SUBJECT – Application February 27, 2012 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a UG 4 synagogue (*Bais Sina*), contrary to floor area ratio and lot coverage (§24-11), front yard (§24-34), side yards (§24-35), rear yard (§24-36), court and minimum distance between walls or windows and lot lines (§24-60) regulations. R5 zoning district.

PREMISES AFFECTED – 1914 50<sup>th</sup> Street, 100’ east from the corner formed by 19<sup>th</sup> Avenue and south of 50<sup>th</sup> Street, Block 5462, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 14, 2012, acting on Department of Buildings Application No. 320384035 reads, in pertinent part:

Proposed House of Worship (UG 4) in an R5 District is contrary to:

ZR 24-11 Floor Area & Lot Coverage

ZR 24-34 Front Yard

ZR 24-36 Rear Yard

ZR 24-35 Side Yard

ZR 24-60 Court Regulations and Minimum Distance between Walls or Windows and Lot Line; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5 zoning district, the legalization of a change in use and the construction of an enlargement to two attached two-story residential buildings to be occupied by a synagogue (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, rear yard, side yards, and court regulations and minimum distance between walls or windows and lot line, contrary to ZR §§ 24-11, 24-34, 24-36, 24-35, and 24-60; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in *The City Record*, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application with the condition that there not be a door at the rear of the building adjacent to the private alleyway for the properties on 51<sup>st</sup> Street; and

WHEREAS, this application is being brought on behalf of the Bais Sina (the “Synagogue”), a non-profit religious entity; and

WHEREAS, the subject site is located on the south side of 50<sup>th</sup> Street, 100 feet east of 19<sup>th</sup> Avenue, within an R5 zoning district; and

WHEREAS, the subject site has a width of 43’-11¼”, a depth of 100’-2 1/8”, and a lot area of 4,402 sq. ft.; and

WHEREAS, the subject site is currently occupied by two attached two-story buildings built for residential use, but now partially occupied by the Synagogue; the site was formerly Zoning Lots 12 and 13, which have been merged



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and together are now Lot 12; and

WHEREAS, the applicant proposes to legalize the conversion of the residential building at 1914 50<sup>th</sup> Street to community facility use, to incorporate the attached residential building at 1916 50<sup>th</sup> Street, for the proposed one-story enlargement at the rear of the building, and to add a partial third floor; and

WHEREAS, the applicant states that the existing buildings have the following parameters: a total floor area of 8,232 sq. ft. (1.87 FAR) (which exceeds the maximum permitted 1.8 FAR for residential use); a total lot coverage of 63 percent; a front yard with a depth of 9'-0"; no side yards; a rear yard with a depth of 21'-2", and insufficient court and wall to window/lot line dimensions; and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 9,536 sq. ft. (2.17 FAR) (a maximum community facility floor area of 8,804 sq. ft. and 2.0 FAR is permitted); a lot coverage of 62 percent (a maximum lot coverage of 60 percent is permitted); a front yard with a depth of 9'-0" (a front yard with a minimum depth of 10'-0" is required); no side yards (side yards with a minimum width of 8'-0" are required); a rear yard with a depth of 21'-2" and 38'-0" at the new third floor level (a rear yard with a minimum depth of 30'-0" is required); and insufficient court and wall to window/lot line dimensions; and

WHEREAS, the applicant notes that the conversion of the existing residential buildings to community facility use will create new non-compliances with regard to floor area, lot coverage, and side yards; the proposal will maintain existing non-complying front and rear yard conditions; and

WHEREAS, the proposal provides for the following uses: (1) worship space, an office, and restrooms at the basement and first floor; (2) a rabbi's apartment and sexton's apartment on the second floor; and (3) a portion of the rabbi's apartment on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation; (2) to provide a separate worship space for male and female congregants; and (3) to provide accessory space and a rabbi's and sexton's apartments so that both can be readily accessible to the congregation; and

WHEREAS, the applicant states that the congregation has occupied the pre-existing residential building for several years and that they require additional space to accommodate the congregation onsite; and

WHEREAS, the applicant further states that the current facility does not provide a separate gallery for female worshippers; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to create a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, and rabbi's and sexton's apartments; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its

religious practice; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, specifically, the applicant states that the proposed floor area accommodates the minimum space required to provide the congregation with sufficient worship space; and

WHEREAS, at hearing, the Board asked the applicant to explain whether the floor area of the two accessory apartments was contributing to the floor area waiver request; and

WHEREAS, in response, the applicant provided an analysis which reflects that the inclusion of the two apartments actually results in a decrease in the residential floor area of the site by 1,271 sq. ft. and that the floor area increase is required for the synagogue space; and

WHEREAS, the applicant states that the lot coverage waiver is required so that the former space between the two residential buildings can be filled in to allow for a continuous worship space at the basement and first floor; and

WHEREAS, the applicant states that the requested yard waivers will allow the proposed synagogue to provide efficient floor plates large enough to accommodate its worshippers, while not creating any new non-compliance, just continuing the existing non-complying side yards while providing a complying front yard condition of a depth of 9'-0" and a complying rear yard condition of 38'-0" above the second floor; and

WHEREAS, the applicant notes that if both required side yards of 8'-0" each were provided, the third floor would be required to be set back 8'-0" on either side and that the remaining building width could not accommodate the programmatic needs; and

WHEREAS, the applicant notes that the existing absence of side yards at the basement through second floor levels is a complying condition for residential use and is only rendered non-complying due to the change in use from residential to community facility use; and

WHEREAS, the applicant will retain the existing non-complying side yard condition; and

WHEREAS, as to minimum court size and distance from window to wall, the applicant notes that those conditions are related to the pre-existing court separating the two attached buildings, which is a historic built condition; and

WHEREAS, further, the court and distance from window to wall conditions on the third floor affect a single occupant as the space on both sides of the court is within the same apartment; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building enlargement would result in a significantly narrower building with a worship space too constrained to accommodate the size of the congregation and accessory uses; and

WHEREAS, the Board acknowledges that the

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Synagogue, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue coupled with the constraints of the existing buildings create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed enlargement will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the vast majority of congregants live within three-quarters of a mile of the site and will walk to the Synagogue as required by Jewish Law on the Sabbath; accordingly, there will not be any demand for parking; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that there are several three- and four-story buildings on the subject block and across the street from the subject site and that there is a mix of residential and community facility uses; and

WHEREAS, the applicant states that the adjacent residential buildings to the east similarly do not have the required front yard and that the proposed new third floor will provide the required front yard setback; and

WHEREAS, the applicant notes that the adjacent building to the west is a religious school built to the shared lot line; and

WHEREAS, as to the Community Board's request that there not be a door at the rear of the building adjacent to the alleyway, the applicant notes that its proposal does not include such a door; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant proposes to provide a front setback and a rear setback at the new third floor, which respects zoning district regulations; and

WHEREAS, the Board notes that the non-complying front yard, rear, and side yard conditions are pre-existing; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.12BSA082K, dated February 12, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site in an R5 zoning district, the legalization of a change in use and the construction of an enlargement to two attached two-story residential buildings to be occupied by a synagogue (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, rear yard, side yards, and court regulations and minimum distance between walls or windows and lot line, contrary to ZR §§ 24-11, 24-34, 24-36, 24-35, and 24-60; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted,

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filed with this application marked “Received November 20, 2012” – (10) sheets, and *on further condition*:

THAT the building parameters will include: a maximum floor area of 9,968 sq. ft. (2.17 FAR); a maximum wall height of 26’-10”, and total height of 37’-10”, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

THAT the above conditions will be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 76-12-BZ

### CEQR #12-BSA-107K

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owner.

SUBJECT – Application April 2, 2012 – Special Permit (§73-622) for the enlargement of an existing single-family home, contrary to floor area, open space and lot coverage (§23-141) and less than the minimum side yards (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #15K

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 21, 2012, acting on Department of Buildings Application No. 320439600, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio (FAR) exceeds the maximum permitted.
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required.
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum permitted.
4. Plans are contrary to ZR 23-461(a) in that the existing minimum side yards are less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on June 19, 2012 after due notice by publication in *The City Record*, with continued hearings on July 24, 2012, September 11, 2012, and October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 3,100 sq. ft., and is occupied by a single-family home with a floor area of 1,385 sq. ft. (0.45 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to increase the floor area to 2,805.57 sq. ft. (0.90 FAR); the maximum permitted floor area is 1,553.75 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space of 54 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes a lot coverage of 46 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will maintain the previously-existing non-complying side yard with a width of .7 feet along the northern lot line and a width of 4.4 feet along the southern lot line (two side yards with minimum widths of 5’-0” each and a total width of 13’-0” are required); and

WHEREAS, the applicant initially proposed a site plan that included two parking pads in the front yard and two curb cuts; and

WHEREAS, at hearing, the Board questioned the presence of the existing curb cuts and two parking spaces in the front yard, particularly in light of DOB violations

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regarding illegal curb cuts; and

WHEREAS, the applicant represents that the curb cuts are pre-existing; and

WHEREAS, at the Board's direction, the applicant removed one parking pad and one of the curb cuts from the site plan; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received July 10, 2012"-(6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,805.57 sq. ft. (0.90 FAR); a minimum open space of 54 percent; a maximum lot coverage of 46 percent; a side yard with a minimum width of .7 feet along the northern lot line; and a side yard with a minimum width of 4.4 feet along the southern lot line, as illustrated on the BSA-approved plans;

THAT curb cuts and parking spaces in the front yard are subject to DOB review and approval;

THAT DOB will confirm compliance with landscaping requirements associated with the proposed enlargement;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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**141-12-BZ**

APPLICANT – Eric Palatnik, for Won Hoon Cho, Inc., owner.

SUBJECT – Application May 3, 2012 – Re-Instatement (§§11-411 & 11-412) of a previously approved variance which permitted retail (UG 6) in a residential district which expired on October 14, 1989; amendment to permit the installation of awnings/signage, and changes to the interior layout; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 65-02/10 164<sup>th</sup> Street, southwest corner of 65<sup>th</sup> Street, Block 6762, Lot 53, Borough of Queens.

**COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 3, 2012, acting on Department of Buildings Application No. 420525863, reads in pertinent part:

Proposed re-instatement of previous BSA Calendar Number 976-54-BZ and minor amendment to previous approval is contrary to BSA Calendar Number 976-54-BZ and therefore must be referred to the NYC BSA; and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval to permit the operation of retail use (Use Group 6) pursuant to ZR § 11-411, and an amendment to permit modifications to the previously-approved plans pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in the *City Record*, with continued hearings on September 11, 2012 and October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley- Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of 164<sup>th</sup> Street and 65<sup>th</sup> Avenue, within an R4 zoning district; and

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WHEREAS, the Board has exercised jurisdiction over the subject site since May 10, 1955 when, under BSA Cal. No. 976-54-BZ, the Board granted a variance to permit the construction of a building to be occupied by commercial use, for a term of 20 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on November 25, 1986, the Board granted an extension of term to expire on November 25, 1989; and

WHEREAS, the applicant now proposes to reinstate the grant; and

WHEREAS, the applicant has requested an extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, at hearing, the Board asked the applicant to provide submissions as to the continuity of the use and to address whether the character of the area has changed since the last extension of term; and

WHEREAS, in response, the applicant stated that the site is occupied by three separate commercial businesses, which have all been in continuous operation; one of the stores, formerly occupied by Mr. Burger restaurant was vacant from August 2011 through March 2012 (a period of eight months), but is now occupied by Ecu Thrift Shop; and

WHEREAS, the applicant states that the current owner purchased the site in August 1984 and, after receiving a violation from DOB that it was operating with an expired certificate of occupancy in 1986, obtained an extension of term that expired in 1989; and

WHEREAS, the applicant represents that the owner misunderstood that further extensions of term would be required and continued to operate the premises, while filing several applications at DOB (in 1993, 2002, 2009, and 2010); and

WHEREAS, the applicant asserts that, although the term lapsed in 1989, the use continued throughout that period as evidenced, in part, by the records of the applicant's repeated actions at DOB between 1993 and 2010; and

WHEREAS, the applicant states that there has not been any change in the character of the area; specifically, the subject use is adjacent to residential use, which it serves, and to a neighborhood park; and

WHEREAS, the applicant proposes the following hours of operation: (1) Bus Stop Deli – 6:00 a.m. to midnight, daily; (2) Ecu Thrift Shop – 10:00 a.m. to 5:30 p.m., closed Monday; and (3) Armor Locksmith – 9:00 a.m. to 5:30 p.m., closed Saturday; and

WHEREAS, the applicant states that garbage pickup is on Sunday, Tuesday, Wednesday, and Thursday; and

WHEREAS, the applicant also seeks to amend the grant to approve site conditions that do not conform with previously approved plans; specifically, to reflect the

addition of three new awnings with signs and changes to the interior layout; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, during the course of the hearing process, the Board questioned whether the signage complied with prior approvals and with C1 zoning district regulations; and

WHEREAS, in response, the applicant submitted a sign analysis and revised drawings reflecting signs that comply with C1 zoning district regulations; and

WHEREAS, the applicant also submitted photographs reflecting the removal of all non-complying signs from the site and a signage plan reflecting that the site complies with C1 district signage regulations; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-412.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval for commercial use (UG 6), and an amendment to permit the noted modifications to the site; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received November 19, 2012"-(5) sheets; and *on further condition*:

THAT this approval will be for a term of ten years, to expire on November 20, 2022;

THAT all signage on the site shall comply with C1 district regulations;

THAT the site will be kept free of graffiti, dirt and debris;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy be obtained by November 20, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

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## 42-10-BZ

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116’ west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for adjourned hearing.

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## 113-11-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Patrick’s Home for the Aged and Infirm, owners.

SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.

PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for adjourned hearing.

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## 160-11-BZ

APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.

SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (*Jewish National Fund*), contrary to rear yard (§24-33), rear yard setback (§24-552), lot coverage (§24-11), and height and setback (§§23-633, 24-591) regulations. R8B/LH-1A zoning district.

PREMISES AFFECTED – 42 East 69<sup>th</sup> Street, south side of East 69th Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.

### COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 1:30 P.M., for decision, hearing closed.

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## 61-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.

SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25’ of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 1:30 P.M., for decision, hearing closed.

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## 74-12-BZ

APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.

SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 252 Exeter Street, west side 350’ north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for decision, hearing closed.

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## 82-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.

SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2011 East 22<sup>nd</sup> Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

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November 27, 2012, at 1:30 P.M., for adjourned hearing.

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**152-12-BZ**

APPLICANT—Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65’ southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

**COMMUNITY BOARD #12Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for decision, hearing closed.

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**159-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.

SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building, contrary to rear yard requirements (§24-36). R3-2 zoning district.

Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building contrary to rear yard requirements, ZR §24-36. R3-2 zoning district.

PREMISES AFFECTED – 94-07 156<sup>th</sup> Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, Borough of Queens.

**COMMUNITY BOARD #10Q**

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

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**189-12-BZ**

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Laid over to

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**210-12-BZ**

APPLICANT – Herrick, Feinstein LLP, for 44 West 28<sup>th</sup> Street Penn Plaza Properties, LLC, owner; CrossFit NYC, lessee.

SUBJECT – Application July 23, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*CrossFit*) to be located on second story of an existing 16-story building. C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 44 West 28<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 829, Lot 68, Borough of Manhattan.

**COMMUNITY BOARD #5M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for decision, hearing closed.

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**233-12-BZ**

APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.

SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential district, contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139<sup>th</sup> Avenue, 246<sup>th</sup> Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.

**COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

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**235-12-BZ**

APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.

SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.

PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

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## **237-12-BZ**

APPLICANT – Wachtel Masyr & Missry LLP, for Red Circle New York Corp., owner; Crunch LLP, lessee.

SUBJECT – Application August 1, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Crunch LLC*). C6-4A zoning district. C6-2A zoning district.

PREMISES AFFECTED – 220 West 19<sup>th</sup> Street between 7<sup>th</sup> and 8<sup>th</sup> Avenues, Block 768, Lot 50, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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## **249-12-BZ**

APPLICANT – Lewis E. Garfinkel, for Solomon Friedman, owner.

SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a); side yards (§23-461(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1320 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, 140' south of Avenue M, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to December 4, 2012, at 1:30 P.M., for continued hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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40 Rector Street, 9th Floor, New York, N.Y. 10006.

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Volume 97, No. 49

December 5, 2012

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### DIRECTORY

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**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

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**316-12-BZ**

37-20 Prince Street, west side of Prince Street between 37th Avenue and 39th Avenue, Block 4972, Lot(s) 43, Borough of **Queens, Community Board: 7**. Special permit (73-36) to allow proposed physical culture establishment. C4-2 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**DECEMBER 11, 2012, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 11, 2012, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **107-06-BZ**

**APPLICANT** – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; Equinox 63<sup>rd</sup> Street, Inc. lessee.

**SUBJECT** – Application September 14, 2012 – Amendment to previously granted Special Permit (73-36) for the increase (693 square feet) of floor area of an existing Physical Culture Establishment (*Equinox*). C10-8X/R8B zoning district.

**PREMISES AFFECTED** – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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## **APPEALS CALENDAR**

### **162-12-A**

**APPLICANT** – Davidoff Hatcher & Citron, LLP, for CBS Outdoor, Inc.

**OWNER OF PREMISES:** Winston Network, Inc.

**SUBJECT** – Application May 31, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign, pursuant to Z.R.§52-731. R4 zoning district.

**PREMISES AFFECTED** – 49-21 Astoria Boulevard North, northwest corner of Astoria Boulevard North and Hazen Street, Block 1000, Lot 19, Borough of Queens.

**COMMUNITY BOARD #1Q**

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### **167-12-A**

**APPLICANT** – Davidoff Hatcher & Citron, LLP, for Lamar Advertising of Penn LLC.

**OWNER OF PREMISES:** Flash Inn Inc. c/o Danny Miranda

**SUBJECT** – Application June 7, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign, pursuant to Z.R.§52-731.

**PREMISES AFFECTED** – 101-07 Macombs Place, northwest corner of Macombs Place and West 154<sup>th</sup> Street, Block 2040, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #10M**

### **169-12-A & 170-12-A**

**APPLICANT** – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC.

**OWNER OF PREMISES** – 26-28 Market Street, Inc.

**SUBJECT** – Application June 7, 2012 – Appeal from Department of Buildings' determination that signs are not entitled to continued non-conforming use status as advertising signs, pursuant to Z.R.§52-731.

**PREMISES AFFECTED** – 24-28 Market Street, southeast intersection of Market Street and Henry Street, Block 275, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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*Jeff Mulligan, Executive Director*

**DECEMBER 11, 2012, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 11, 2012, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **57-12-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Mykola Volynsky, owner.

**SUBJECT** – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); less than the required rear yard (§23-37). R4 zoning district.

**PREMISES AFFECTED** – 2670 East 12<sup>th</sup> Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### **212-12-BZ**

**APPLICANT** – Gerald J. Caliendo, R.A., AIA, for Conver Realty/Pat Pescatore, owners; Sun Star Services, LLC, lessee.

**SUBJECT** – Application July 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Massage Envy*) in the cellar and first floor of the existing commercial building. C2-2/R6B zoning district.

**PREMISES AFFECTED** – 38-03 Bell Boulevard, east side of Bell Boulevard, 50.58' south of intersection formed by Bell Boulevard and 38<sup>th</sup> Avenue, Block 6238, Lot 18, Borough of Queens.

**COMMUNITY BOARD #11Q**

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# CALENDAR

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**275-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Fayge Hirsch and Abraham Hirsch, owners.

SUBJECT – Application September 6, 2012 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR 23-141; side yard ZR 23-461. R-2 zoning district.

PREMISES AFFECTED – 2122 Avenue N, southwest corner of Avenue N and East 22<sup>nd</sup> Street, Block 7675, Lot 61, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**283-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for 440 Broadway Realty Associates, LLC, owner.

SUBJECT – Application September 24, 2012 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 440 Broadway, between Howard Street and Grand Street, Block 232, Lot 3, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, NOVEMBER 27, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

### SPECIAL ORDER CALENDAR

#### 743-59-BZ

APPLICANT – Peter Hirshman for VM 30 Park, LLC, owner.

SUBJECT – Application June 14, 2012 – Extension of Term of a previously approved variance (Section 7e 1916 zoning resolution and MDL Section 60 (1d)), which permitted 20 attended transient parking spaces, which expired on June 14, 2011; Waiver of the Rules. R10/R9X zoning district.

PREMISES AFFECTED – 30 Park Avenue, southwest corner of East 36th Street and Park Avenue. Block 865, Lot 40. Borough of Manhattan.

#### COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

#### 299-82-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.

SUBJECT – Application May 4, 2012 – Amendment to a previously granted variance (§72-21) which allowed a residential building. Proposed amendment would permit a new mixed use hotel and residential building on the subject zoning lot. C6-1 zoning district.

PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2,200, Borough of Manhattan.

#### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to December 11, 2012, at 10 A.M., for deferred decision.

#### 135-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Go Go Leasing Corp., owner.

SUBJECT – Application November 29, 2011 – Extension of Term (§11-411) of an approved variance which permitted a high speed auto laundry (UG 16B) which expired on October 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on October 30, 2002; Waiver

of the Rules. C1-2(R5) zoning district.

PREMISES AFFECTED – 1815/17 86<sup>th</sup> Street, 78'-8.3"northwest 86<sup>th</sup> Street and New Utrecht Avenue, Block 6344, Lot 69, Borough of Brooklyn.

#### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for deferred decision.

#### 197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD #9BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for adjourned hearing.

### APPEALS CALENDAR

#### 85-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communication LLC.

OWNER OF PREMISES - G.A.L. Manufacturing Company  
SUBJECT – Application April 6, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-1 zoning district.

PREMISES AFFECTED – 50 East 153<sup>rd</sup> Street, bounded by Metro North and the Metro North Station; an off ramp to the Major Deegan Expressway, E. 157<sup>th</sup> Street, E. 153<sup>rd</sup> Street and the Bronx Terminal Market, Block 2539, Lot 132, Borough of Bronx.

#### COMMUNITY BOARD #4BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

# MINUTES

## 90-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

OWNER OF PREMISES – Robal Arlington Corporation.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-6 zoning district.

PREMISES AFFECTED – 111 Varick Street, between Broome and Dominick Street, Block 578, Lot 71, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

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## 103-12-A

APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.

SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for adjourned hearing.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## REGULAR MEETING

**TUESDAY AFTERNOON, NOVEMBER 27, 2012**  
**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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## ZONING CALENDAR

### 5-11-BZ

#### CEQR #11-BSA-052K

APPLICANT – Akerman Senterfitt, LLP, for Dumbo Development, LLC, owner.

SUBJECT – Application January 14, 2011 – Variance (§72-21) to allow for a new five-story residential development, contrary to use regulations (§42-00). M2-1 zoning district. PREMISES AFFECTED – 9 Old Fulton Street, northeasterly side of Old Fulton Street, Block 35, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 13, 2011, acting on Department of Buildings Application No. 320146445, reads, in pertinent part:

BSA Special Permit required for residential use in an M2-1 manufacturing district as per ZR 42-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M2-1 zoning district within the Fulton Ferry Historic District, the construction of a five-story mixed-use residential/commercial building with ground floor retail use and residential use above, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 21, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on November 27, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, New York City Council Member Stephen T. Levin recommends approval of this application; and

WHEREAS, a member of the community provided

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# MINUTES

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testimony in opposition to the application (the “Opposition”), citing concerns with the proposed height of the building; and

WHEREAS, the site is located on the north side of Old Fulton Street, between Front Street and Water Street, in an M2-1 zoning district within the Fulton Ferry Historic District; and

WHEREAS, the site has 22’-8” of frontage along Old Fulton Street, a depth ranging between 60’-11” and 61’-10”, and a total lot area of 1,396 sq. ft.; and

WHEREAS, the site is currently vacant with the exception of an unoccupied one-story 660 sq. ft. building formerly utilized as an accessory kitchen for the adjacent building at 7 Old Fulton Street; and

WHEREAS, the applicant proposes to demolish the existing building and construct a five-story mixed-use residential/commercial building with ground floor retail and three dwelling units above; and

WHEREAS, the proposed building will have a total floor area of 4,575 sq. ft. (3.28 FAR), a residential floor area of 3,320 sq. ft. (2.38 FAR), a commercial floor area of 1,255 sq. ft. (0.90 FAR), a rear yard with a minimum depth of 16’-0”, and a total building height of 50’-4”; and

WHEREAS, the cellar level will be occupied by commercial storage and mechanicals; and

WHEREAS, the first floor will be occupied by retail use (UG 6) and a small residential entrance; and

WHEREAS, the second and third floors will be occupied by one residential unit each, and the fourth floor and fifth floor will be occupied by a single residential duplex unit with access to outdoor space on the fifth floor; and

WHEREAS, because residential use is not permitted in an M2-1 zoning district, the applicant seeks the subject use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: the subject lot is undersized, with both a narrow width and shallow depth; and

WHEREAS, as to the depth, the applicant states that the site has an irregular and shallow depth ranging between 60’-11” deep on the westerly side and 61’-10” deep on the easterly side, and is considered a shallow interior lot pursuant to ZR § 23-52; and

WHEREAS, the applicant represents that the shallow depth of the site would result in a building with a depth of only approximately 40 feet if an M2-1 compliant rear yard were provided, which, in conjunction with the narrow width of the site of 22’-8”, would result in an inefficient floor plate for the building; and

WHEREAS, the applicant further represents that the size and configuration of the zoning lot is not appropriate for conforming manufacturing or industrial use; and

WHEREAS, specifically, the applicant states that the narrowness and shallowness of the lot precludes the provision of off-street loading docks, freight elevators, and other requirements of a modern manufacturing or industrial use; and

WHEREAS, as to the uniqueness of the site, the applicant submitted a 400-ft. radius diagram which reflects

that the subject site is the smallest vacant lot in the surrounding area;

WHEREAS, the applicant represents that the two most similarly dimensioned zoning lots on the subject block are Lots 11 and 9, which are immediately adjacent to the subject site, and both of which are occupied by four-story mixed-use buildings almost identical in both appearance and bulk to the proposed building; and

WHEREAS, the applicant further represents that the only other interior zoning lots with comparable shallowness are located across Old Fulton Street on Block 200 (Lots 11, 15, and 17), all of which are occupied by one- or two-story dwellings, which are scaled appropriately to the very narrow side streets (Everit Street and Doughty Street) upon which they front; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as-of-right two-story commercial building with a total floor area of 2,782 sq. ft. (1.99 FAR), and the proposed five-story mixed-use residential/commercial building with ground floor retail use and residential use above; and

WHEREAS, the feasibility study concluded that the as-of-right commercial building would not result in a reasonable return, but that the proposed building would result in a reasonable return; and

WHEREAS, based upon its review of the applicant’s submissions, the Board has determined that because of the subject site’s unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is a mix of residential and commercial uses; and

WHEREAS, the applicant states that the proposed residential use, with ground floor retail, is consistent with the character of the area, which includes many other such uses; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of three dwelling units and ground floor retail will not impact any nearby conforming uses; and

WHEREAS, further, the applicant represents that the area now known as the Fulton Ferry Historic District was characterized by residential use until the Brooklyn Bridge was built; and

WHEREAS, specifically, the applicant represents that the row of buildings on Old Fulton Street, from numbers 7 through 23 were all designed for commercial use on the



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# MINUTES

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ground floor and residential use on the floors above at about the same time; the applicant represents that many of them have continually been used for those purposes; and

WHEREAS, additionally, across the street from the site is a large nine-story building occupied by residential use; and

WHEREAS, at hearing, the Board raised concerns about the appropriateness of the proposed rear yard depth of 16'-0" and the partial fifth floor; and

WHEREAS, in response, the applicant states that, although there are not zoning regulations pertaining to minimum rear yards for residential buildings in manufacturing districts, the rear yard depth was calculated starting with the standard 20'-0" rear yard for an M2-1 zoning district and deducting one-inch for every two inches for which the shallow interior lot is less than 70'-0" in depth, in accordance with ZR § 43-27, which results in the proposed rear yard depth of 16'-0"; thus, the proposed rear yard depth would be in compliance with the Zoning Resolution if the underlying M2-1 district regulations were applicable; and

WHEREAS, the applicant further states that the proposed rear yard depth of 16'-0" is more than the existing rear yards at the adjacent buildings located at 7 and 11 Old Fulton Street, which have rear yard depths of 12'-4" and 14'-5", respectively; and

WHEREAS, as to the appropriateness of the partial fifth floor, the applicant submitted a copy of the Landmarks Preservation Commission ("LPC") plans and Certificate of Appropriateness for the neighboring buildings to the east, at 11, 13, and 15 Old Fulton Street, each of which were approved with similar partial fifth floors and range in total height from 51'-7" to 52'-11", and were permitted pursuant to a previous variance granted by the Board under BSA Cal. No. 136-06-BZ; and

WHEREAS, the applicant states that the proposed building, with a total height of 50'-4", therefore fits within the character of the surrounding area; and

WHEREAS, as to the Opposition's concerns that the proposed building could have a negative effect on the light and air of their building at 4 Water Street and should be limited to four stories in height, the applicant notes that the certificate of occupancy for 4 Water Street, located to the northeast of the site, shows that it is a six-story building with a total height of 76'-0"; and

WHEREAS, additionally, the applicant represents that the partial-fifth floor will be setback above the fourth floor so as to minimize its visibility from the street; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from LPC approving the work associated with the proposed construction, dated October 19, 2012; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Board observes that the proposed building of three dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA052K dated November 26, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP reviewed and accepted the February 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M2-1 zoning district within the Fulton Ferry Historic District, the construction of a five-story mixed-use residential/commercial building with ground floor retail use and residential use above, which is contrary to ZR § 42-10, *on*

# MINUTES

condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 26, 2012" – seven (7) sheet; and on further condition:

THAT the following will be the bulk parameters of the proposed building: five stories; a total floor area of 4,575 sq. ft. (3.28 FAR); a residential floor area of 3,320 sq. ft. (2.38 FAR); a commercial floor area of 1,255 sq. ft. (0.90 FAR); a rear yard with a minimum depth of 16'-0"; and a total building height of 50'-4", as illustrated on the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT DOB shall not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23;

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 27, 2012.

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## 71-12-BZ

### CEQR #12-BSA-103Q

APPLICANT – Akerman Senterfitt, LLP, for Archer Avenue Partners, LLC, owner; Neighborhood Housing Services of Jamaica, Inc., lessee.

SUBJECT – Application March 23, 2012 – Variance (§72-21) to allow for a new 14-story residential building with ground floor retail, contrary to floor area (§§115-211/23-942), height and setback (§115-233), and accessory off street parking (§115-51). C6-2/Downtown Jamaica Special Zoning District.

PREMISES AFFECTED – 165-10 Archer Avenue, southeast corner of 165<sup>th</sup> Street and Archer Avenue, Block 10155, Lot 105, Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 13, 2012, acting on Department of Buildings Application No. 420602618, reads in pertinent part:

1. Proposed mixed use building is non-compliant for gross building area permitted for both residential area and total for the mixed building per ZR 115-211/23-952
2. Proposed mixed-use building is non-compliant for minimum setback above base height per ZR 115-233
3. Proposed mixed-use building is non-compliant for minimum required accessory parking spaces for residential and commercial per ZR 115-51(b)/25-20/25-25/15-51(a)/36-21; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C6-2 zoning district within the Special Downtown Jamaica District, the construction of a 14-story mixed-use residential/commercial building which does not comply with floor area, height and setback, and accessory off-street parking regulations, contrary to ZR §§ 115-211/23-942, 115-233, and 115-51; and

WHEREAS, a public hearing was held on this application on August 21, 2012 after due notice by publication in *The City Record*, with a continued hearing on October 16, 2012, and then to decision on November 27, 2012; and

WHEREAS, this application is brought on behalf of Neighborhood Housing Services of Jamaica ("NHSJ"), a not-for-profit entity; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, Borough President Helen Marshall submitted a recommendation in support of the proposal; and

WHEREAS, City Council Member Leroy Comrie submitted a letter in support of the proposal; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site has a lot area of approximately 9,399 sq. ft., and is on the southeast corner of 165<sup>th</sup> Street and Archer Avenue within a C6-2 zoning district within the Special Downtown Jamaica District; and

WHEREAS, the site is currently occupied by a one-story commercial building; and

WHEREAS, the applicant proposes to construct a 14-story mixed-use building to be occupied by ground floor retail use and 89 workforce housing units on the upper floors; and

WHEREAS, the proposed building reflects the following parameters: (1) a floor area of 93,041 sq. ft. (9.9 FAR) (67,674 sq. ft. (7.2 FAR) is the maximum permitted); (2) setbacks of 3'-0" above a streetwall height of 60'-0" along Archer Avenue and 165<sup>th</sup> Street (setbacks of 10'-0" along Archer Avenue and 15'-0" along 165<sup>th</sup> Street are the minimum required); (3) a total height of 132'-6"; and (4) no accessory parking spaces (31 residential parking spaces and seven commercial parking spaces are the minimum required); and

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WHEREAS, the applicant represents that the requested variance is necessitated by unique conditions of the site that create a hardship, specifically: (1) an irregular shape; (2) shallow depth; and (3) adjacency to railroad tracks; and

WHEREAS, the applicant states that the irregular shape and shallowness of the site, which has 116'-10" of frontage along Archer Avenue, an angled 120'-1/2" southern lot line, and a range of lot depths from 94'-2" along its eastern lot line to 66'-8 1/2" at its frontage along 165<sup>th</sup> Street; and

WHEREAS, the applicant asserts that the irregular shape and shallow depth creates substantial difficulty in designing an efficient residential building in compliance with setback and parking regulations; and

WHEREAS, the applicant notes that the irregular shape and shallow depth constrain the site and compromise floor plates particularly if the requirement for a setback of 15'-0" along the 165<sup>th</sup> Street frontage and 10'-0" along the Archer Avenue frontage above a maximum streetwall of 60'-0"; the setbacks would result in the upper floors having a maximum floor plate of 3,500 sq. ft.; and

WHEREAS, the applicant states that the 3,500 sq. ft. as-of-right floor plate would be inefficient given the inclusion of egress and circulation space and would limit those floors to only two units each; and

WHEREAS, further, the applicant states that a typical efficient layout for a multiple dwelling building is approximately a building depth of 60 feet with residential units on two sides of a central corridor (the double-loaded design); and

WHEREAS, however, due to the shallow depth and the requirement for a distance of 30'-0" between legal windows and lot lines, building a double-loaded corridor along the entire frontage of Archer Avenue is not possible; and

WHEREAS, the applicant states that if a building with a length of 116'-0" and a depth of 60'-0" were constructed, only a non-complying depth of 7'-0" would remain between windows at the rear of the building and the lot line; and

WHEREAS, the applicant states that ZR § 115-51 requires residential buildings within the Special Downtown Jamaica District to comply with the parking requirements for R6A zoning districts, which set forth that there be parking for 35 percent of residential units; and

WHEREAS, the applicant notes that based on the proposed 89 units, 31 accessory residential parking spaces are required (in addition to seven accessory commercial parking spaces), and that based on parking standards, approximately 11,400 sq. ft. would be required to accommodate all parking; and

WHEREAS, the applicant states that the required spaces would necessitate at least two levels for parking, most likely as two cellar levels, which would be cost prohibitive to provide due to the unique site conditions and foundation requirements resulting from the site's adjacency to railroad tracks; and

WHEREAS, the applicant states that any parking layout would result in additional inefficiencies due to the irregular and shallow site and the accommodation for ramps and adequate turning radii; and

WHEREAS, as to the adjacency of the railroad tracks,

the applicant states that the elevated Long Island Railroad (LIRR) tracks abut the site along the southern lot line and their presence contributes to increased construction costs; and

WHEREAS, specifically, the applicant states that there are several supplemental requirements during construction, which include a supervised supportive excavation, an extensive multi-story shoring system, specialized underpinning, seismic monitoring, and increased mobilization, permits, insurance (including special MTA insurance), and engineering costs; and

WHEREAS, the applicant submitted a construction study and a letter from an engineer, which sets forth the premium costs associated with sub-grade construction at the site; and

WHEREAS, the applicant notes that the floor area waiver request is driven in part by the premium costs associated with the adjacency of the railroad tracks and the site's size and shape which results in inefficient floor plates even given the requested bulk waivers; and

WHEREAS, as to the uniqueness of the site, the applicant analyzed the sites within a 1,000-ft. radius of the site and concludes that it is one of only two sites which have a lot area of 9,500 sq. ft. or less, are irregularly-shaped, and are adjacent to the LIRR; and

WHEREAS, in addition to the noted physical constraints of the site, the applicant states that NHSJ's programmatic needs to provide home ownership education and affordable housing services to low- and moderate-income tenants contributes to the waiver request; and

WHEREAS, the applicant states that its programmatic needs require more than the 68 units which could be provided in an as of right building; and

WHEREAS, the applicant provided an analysis of the viability of buildings with 68, 75, 82, and 89 units and concluded that there would be a funding shortfall for all but the 89-unit building based on the gap between cost per unit and subsidies; and

WHEREAS, specifically, the applicant states that 89 units are required, and that their size is based on HPD/HDC standards for apartment sizes; and

WHEREAS, the applicant further states that the building program includes access to onsite community and outdoor space; and

WHEREAS, the applicant provided documentation of a preliminary funding commitment from the NYC Housing Development Corporation, which notes that, pursuant to its Low Income Affordable Marketplace Program (LAMP), all of the units will remain affordable to residents earning less than 60 percent of Area Median Income; and

WHEREAS, the applicant represents that the building program is determined in part by the requirements of the government funding sources concerning building design and unit count; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable

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zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since it is a not-for-profit organization and the development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant asserts that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the proposed development is consistent with that of the surrounding area, which is characterized by a mix of commercial, transportation/utility, and public facility/institutional uses, which includes buildings of comparable height and bulk; and

WHEREAS, the applicant notes that the proposed residential and commercial uses conform with zoning district regulations; and

WHEREAS, the applicant represents that the proposed building has been redesigned after consultation with community organizations and leaders to include a setback of 3'-0" above the maximum streetwall height of 60 feet; and

WHEREAS, the applicant notes that although the buildings in the immediate area do not reach 14 stories in height, the Special Downtown Jamaica District regulations contemplate buildings up to a height of 250 feet; and

WHEREAS, the applicant states that all required windows facing and within proximity to the railroad tracks will maintain OITC ratings below the minimum noise levels industry standards; and

WHEREAS, the applicant has performed a parking study which reflects that any parking demand generated by the site can be accommodated on-street and that the site is well-served by public transportation, including more than a dozen bus stops within a two-block radius of the site as well as three subway lines just beyond one-quarter of a mile; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as discussed above, NJSJ requires a minimum number of housing units in order to achieve its programmatic needs and to be eligible for certain funding; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow NJSJ to carry out the stated needs; and

WHEREAS, also, as discussed above, the applicant submitted an analysis of a building with fewer units and determined that it could not be supported financially; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR Section 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

Assessment Statement (EAS) CEQR No. 12BSA103Q, dated November 26, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, noise and air quality impacts; and

WHEREAS, DEP reviewed and accepted the November 2012 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's May 2012 noise assessment and determined that a minimum of 35 dBA of window-wall noise attenuation should be provided on all facades of the subject building, except the façade facing the elevated rail line that does not have windows, and that an alternate means of ventilation should be provided throughout the entire building; these measures are required to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP reviewed the applicant's May 2012 stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within a C6-2 zoning district within the Special Downtown Jamaica District, the construction of a 14-story mixed-use residential/commercial building which does not comply with floor area, height and setback, and accessory off-street parking regulations, contrary to ZR §§ 115-211/23-942, 115-233, and 115-51, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 26, 2012"- fourteen (14) sheets; and *on further condition*:

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THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT the applicant will provide central air-conditioning and heating as a means of alternate ventilation throughout the entire building to maintain a closed window condition at all times;

THAT the above condition will be listed on the certificate of occupancy;

THAT the parameters of the proposed building will be: a maximum total floor area of 93,041 sq. ft.; a residential floor area of 85,807 sq. ft.; a commercial floor area of 7,234 sq. ft.; a total FAR of 9.9; a street wall height of 60'-0"; and a total height of 132'-6" (without bulkhead), as illustrated on the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with DEP's approval of the Remedial Closure Report;

THAT the internal floor layouts on each floor of the proposed building will be as reviewed and approved by DOB;

THAT construction will proceed in accordance with ZR § 72-23;

THAT this approval is limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 27, 2012.

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## 165-12-BZ

### CEQR #12-BSA-142K

APPLICANT – Law Office of Fredrick A. Becker, for Sarah Weinbeger and Moshe Weinberger, owner.

SUBJECT – Application June 4, 2012 – Special Permit (§73-622) for the enlargement and partial legalization of an existing single family home contrary to floor area and open space (§23-141) and rear yard (§23-47) regulations; R2 zoning district.

PREMISES AFFECTED – 1286 East 23rd Street, west side of East 23rd Street, 60' north of Avenue M. Block 7640, Lot 82. Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 21, 2012, acting on Department

of Buildings Application No. 320456500, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of .50.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on October 23, 2012 after due notice by publication in *The City Record*, and then to decision on November 27, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23<sup>rd</sup> Street 60 feet north of Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 3,207.31 sq. ft. (0.80 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant proposes to increase the floor area to 4,016.87 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes an open space ratio of 58.3 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes a rear yard with a depth of 20'-0" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the applicant's initial proposal reflected a front porch which extended to the front lot line; and

WHEREAS, the Board directed the applicant to remove the porch from its plans and noted that the porch would be subject to DOB review and approval; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions

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and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 4, 2012"- (4) sheets, "October 11, 2012"- (5) sheets and "November 27, 2012"- (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,016.87 sq. ft. (1.0 FAR); a minimum open space ratio of 58.3 percent; and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT all porches are subject to DOB review and approval;

THAT construction will proceed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 27, 2012.

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## 147-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.

SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.

PREMISES AFFECTED – 24-47 95<sup>th</sup> Street, east side of 95<sup>th</sup> Street, between 24<sup>th</sup> and 25<sup>th</sup> Avenues, Block 1106, Lot 44, Borough of Queens.

## COMMUNITY BOARD #3Q

## APPEARANCES –

For Applicant: Jordan Most, Arthur Paris and Consuelo Paris Celestine.

For Opposition: Jeffrey Chester.

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for adjourned hearing.

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## 157-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1968 2<sup>nd</sup> Avenue Realty LLC., owner.

SUBJECT – Application October 5, 2011– Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.

PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101<sup>st</sup> Street, Block 1673, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #11M

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for adjourned hearing.

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## 16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

## COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for adjourned hearing.

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## 43-12-BZ

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

## COMMUNITY BOARD #2M

## APPEARANCES –

For Applicant: Raymond Levin.

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for deferred decision.

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## 56-12-BZ

APPLICANT – Eric Palatnik, P.C., for Alexander Grinberg, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 168 Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8756, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for adjourned hearing.

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## 63-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneuv Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27<sup>th</sup> Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for adjourned hearing.

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## 72-12-BZ

APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.

SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.

PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

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## 73-12-BZ

APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.

SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.

PREMISES AFFECTED – 41-19 Bell Boulevard between 41<sup>st</sup> Avenue and 42<sup>nd</sup> Avenue, Block 6290, Lot 5, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 106-12-BZ

APPLICANT – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story retail store (UG 6), contrary to rear yard regulations (§33-292). C8-3 zoning district.

Special Permit (§73-50) to permit the development of a new one-story Use Group 6 retail store contrary to rear yard §33-292. C8-3 zoning district.

PREMISES AFFECTED – 2102 Jerome Avenue between East Burnside Avenue and East 181<sup>st</sup> Street, Block 3179, Lot 20, Borough of Bronx.

### COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 1:30 P.M., for continued hearing.

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## 156-12-BZ

APPLICANT – Sheldon Lobel, for Prospect Equities Operation, LLC, owner.

SUBJECT – Application May 17, 2012 – Variance (§72-21) to permit construction of a mixed-use residential building with ground floor commercial use, contrary to minimum inner court dimensions (§23-851). C1-4/R7A zoning district.

PREMISES AFFECTED – 816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot 90, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 189-12-BZ

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a

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transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 195-12-BZ

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

## COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

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## 260-12-BZ

APPLICANT – John M. Marmora, Esq., c/o K & L Gates LLP, for McDonald's Corporation, owner.

SUBJECT – Application August 30, 2012 – Special Permit (§73-243) to permit an accessory drive-through facility to an eating and drinking establishment (McDonald's) within the portion of the lot located in a C1-3/R5D zoning district contrary to §§32-15 & 32-32 as well as a Special Permit (§73-52) to extend the commercial use by 25' into the R3A portion of the lot contrary to § 22-10.

PREMISES AFFECTED – 114-01 Sutphin Boulevard, north side of Sutphin Boulevard between Linden Boulevard and 114<sup>th</sup> Road, Block 12184, Lot 7, Borough of Queens.

## COMMUNITY BOARD #12Q

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.

-----

## 276-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 833 Flatbush, LLC c/o Jem Realty, owner; Blink 833 Flatbush Avenue Inc., lessee.

SUBJECT – Application September 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink*) within portions of an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 833/45 Flatbush Avenue, aka 2/12 Linden Boulevard, northeast corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot 8, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 278-12-BZ

APPLICANT – John M. Marmora, Esq. for Robert J. Panzarella, BSB Real Estate Holdings LLC. J & J Real Estate Holdings LLC., owner, McDonald's USA, LLC, lessee.

SUBJECT – Application September 18, 2012 – Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district to permit the development of a proposed eating and drinking establishment (*McDonald's*) with accessory drive thru. C8-2 and R5 zoning district.

PREMISES AFFECTED – 3143 Atlantic Avenue, northwest corner of Atlantic Avenue between Hale Avenue and Norwood Avenue. Block 3960, Lot 58. Borough of Brooklyn.

## COMMUNITY BOARD #5BK

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*



# MINUTES

## \*CORRECTION

This resolution adopted on February 7, 2012, under Calendar No. 166-11-BZ and printed in Volume 97, Bulletin No. 7, is hereby corrected to read as follows:

### 166-11-BZ

#### CEQR #12-BSA-035M

APPLICANT – Ellen Hay/Wachtel & Masyr LLP, for Roc Le Triomphe Associates LLC, owners; Crunch LLC, lessee. SUBJECT – Application October 24, 2011 – Special Permit (§73-36) to continue the operation of the Physical Culture Establishment (*Crunch Fitness*). C2-8 (TA) zoning district. PREMISES AFFECTED – 1109 Second Avenue, aka 245 East 58<sup>th</sup> Street, west side of Second Avenue between East 58<sup>th</sup> and East 59<sup>th</sup> Streets, Block 1332, Lot 29, Borough of Manhattan.

#### COMMUNITY BOARD #6M

##### APPEARANCES –

For Applicant: Ellen Hay.

**ACTION OF THE BOARD** – Application granted on condition.

##### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

##### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 12, 2011, acting on Department of Buildings Application No. 120857260, reads in pertinent part:

Proposed Physical Culture establishment is not permitted as per ZR 73-36 unless granted special permits by the Board of Standards and Appeals as per ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an C2-8 zoning district within the Special Transit Land Use District (TA), the operation of a physical culture establishment (“PCE”) in a portion of the first floor, cellar, and sub-cellar of a 29-story mixed-use residential/commercial building, contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on January 10, 2012, after due notice by publication in *The City Record*, and then to decision on February 7, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the subject site located on the west side of Second Avenue between East 58<sup>th</sup> Street and East 59<sup>th</sup> Street in a C2-8 zoning district within the Special Transit Land Use District (TA); and

WHEREAS, the subject site is occupied by a 29-story

mixed-use residential/commercial building with residential use on the fourth through 29<sup>th</sup> floors and commercial use on the sub-cellar, cellar, first, and second levels; and

WHEREAS, the Board first approved the PCE on July 22, 1997, pursuant to BSA Cal. No. 195-96-BZ, for a term of ten years which expired on October 1, 2006; and

WHEREAS, the site is also the subject of a City Planning special permit for the building pursuant to ZR § 74-95, which was modified to allow for the PCE and associated signage; and

WHEREAS, the PCE occupies 36,119 sq. ft. of floor space on portions of the sub-cellar, cellar, and first floor levels; and

WHEREAS, the PCE is operated as Crunch Fitness; and

WHEREAS, the PCE operates Monday through Thursday 5:00 a.m. to 11:00 p.m.; Friday 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that commercial and accessory residential uses on the second and third floor separate and, thus serve as a buffer between, the PCE on the first floor from the residential use on the fourth floor and above; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 12BSA035M, dated October 19, 2011; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous

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# MINUTES

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Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located in an C2-8 zoning district within the Special Transit Land Use District (TA), the operation of a physical culture establishment in a portion of the first floor, cellar, and sub-cellar of a 29-story mixed-use residential/commercial building, contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 20, 2011"- (5) sheets, and *on further condition*:

THAT the term of this grant will expire on February 7, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures must be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction will be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 7, 2012.

*plans;". Corrected in Bulletin No. 49, Vol. 97, dated December 5, 2012.*

**\*The resolution has been revised to remove the condition which read:** *"THAT sound attenuation measures must be installed in the PCE as shown on the Board-approved*

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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:  
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Volume 97, No. 50

December 12, 2012

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### DIRECTORY

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**CHRISTOPHER COLLINS, *Vice-Chair***

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan, *Executive Director***

**Becca Kelly, *Counsel***

---

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**317-12-A**

40-40 27th Street, between 40th Avenue and 41st Avenue, Block 406, Lot(s) 40, Borough of **Queens, Community Board: 1**. Appeal seeking common law vested rights to continue construction commenced under the prior M1-3D zoning district regulations .M1-2/R5B zoning district.

-----

**318-12-BZ**

45 Crosby Street, East side of Crosby Street, 137.25' north of intersection with Broome Street., Block 482, Lot(s) 3, Borough of **Manhattan, Community Board: 2**. Special permit (73-36) to permit a physical culture establishment within a portion of an existing building. M1-5B district.

-----

**319-12-A**

41-05 69th Street, 41 Avenue and 69th Street, Block 1309, Lot(s) 29, Borough of **Queens, Community Board: 4**. Common law vested rights to renew building permits issued before the effective date of a zoning change from R6 to R5D district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JANUARY 8, 2013, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 8, 2013, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

-----  
**SPECIAL ORDER CALENDAR**

**410-68-BZ**

APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of (UG16B) automotive service station (Citgo) with accessory uses, which expired on November 26, 2008; Extension of Time to Obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85<sup>th</sup> Street. Block 1097, Lot 1. Borough of Queens.

**COMMUNITY BOARD #3Q**

-----

**136-06-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Fulton View Realty, LLC, lessee.

SUBJECT – Application August 24, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the residential conversion and one-story enlargement of three (3) existing four (4) story buildings. M2-1 zoning district.

PREMISES AFFECTED – 11-15 Old Fulton Street, between Water Street and Front Street, Block 35, Lot 7, 8 & 9, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

-----

**208-08-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt, owner.

SUBJECT – Application October 25, 2012 – This application is filed to request an Extension of Time to Complete Construction of a previously granted Special Permit (73-622) to permit the enlargement of an existing single family residence which expired on October 28, 2012. R-2 zoning district.

PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22<sup>nd</sup> Street, Block 7639, Lot 1 & 3(tent.1), Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**255-84-BZ**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application May 23, 2012 – The proposed enlargement of the Community Center (Administration Security Building) partially in the bed of the mapped Rockaway Point Blvd. is contrary to Article 35 of the General City Law.

AFFECTED PREMISES – 95 Reid Avenue, East side Reid Avenue at Rockaway Point Boulevard. Block 16350, Lot p/o300. Borough of Queens.

**COMMUNITY BOARD #14Q**

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**213-12-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Linda McDermott-Paden, lessee.

SUBJECT – Application July 20, 2012 – The proposed reconstruction and enlargement of the existing single family dwelling partially within the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law.

AFFECTED PREMISES – 900 Beach 184<sup>th</sup> Street, east side Beach 184<sup>th</sup> Street, 240' north of Rockaway Point Boulevard. Block 16340, Lot p/o50. Borough of Queens.

**COMMUNITY BOARD #14Q**

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**239-12-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald Greaney, lessee.

SUBJECT – Application August 2, 2012 - The proposed reconstruction and enlargement of the existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system partially in the bed of the Service Road is contrary to Building Department policy. R4 zoning district.

AFFECTED PREMISES – 38 Irving Walk, west side of Irving Walk, 45' north of the mapped Breezy Point Boulevard. Block 16350, Lot p/o 400. Borough of Queens.

**COMMUNITY BOARD #14Q**

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**240-12-A**

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Zorica & Jacques Tortoroli, owner.

SUBJECT – Application August 2, 2012 – The proposed reconstruction and enlargement of the existing single family dwelling partially in the bed of the mapped street is contrary to Article 3, Section 35 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system in the bed of the mapped street is contrary to Article 3 of the General City Law. R4 zoning district.

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# CALENDAR

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PREMISES AFFECTED – 217 Oceanside Avenue, north side Oceanside Avenue, west of mapped Beach 201<sup>st</sup> Street, Block 16350, Lot p/o 400, Borough of Queens.

**COMMUNITY BOARD #14Q**  
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**JANUARY 8, 2013, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 8, 2013, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:  
-----

**ZONING CALENDAR**

**1-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.

SUBJECT – Application January 3, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building.

PREMISES AFFECTED – 434 6<sup>th</sup> Avenue, southeast corner of 6<sup>th</sup> Avenue and West 10<sup>th</sup> Street, Block 573, Lot 6, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
-----

**261-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for One York Property, LLC, owner; Barry's Bootcamp Tribeca LLC, lessee.

SUBJECT – Application August 31, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Barry's Bootcamp*) on the first and cellar floors of the existing building at the premises. C6-2A (TMU) zoning district.

PREMISES AFFECTED – 1 York Street, south side of Laight Street between Avenue of Americas, St. John's and York Streets, Block 212, Lot 7503, Borough of Manhattan.

**COMMUNITY BOARD #1M**  
-----

**280-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Sheila Weiss and Jacob Weiss, owners.

SUBJECT – Application September 21, 2012 – Special Permit (§73-622) for the enlargement of an existing single family contrary to floor area, open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R-2 zoning district.

PREMISES AFFECTED – 1249 East 28<sup>th</sup> Street, east side of 28<sup>th</sup> Street, Block 7646, Lot 26, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**  
-----

**298-12-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application October 17, 2012– Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university uses. M1-5B zoning district.

PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4<sup>th</sup> Street, Block 545, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 4, 2012  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez.

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**SPECIAL ORDER CALENDAR**

**30-58-BZ**

APPLICANT – Vassalotti Associates Architects, LLP for  
Maximum Properties, Inc., owner; Joseph Macchia, lessee.  
SUBJECT – Application July 10, 2012 – Extension of Term  
(§11-411) of a variance permitting the operation of an  
automotive service station (UG 16B) which expired on  
March 12, 2004; Waiver of the Rules. C2-1/R3-1 zoning  
district.

PREMISES AFFECTED – 184-17 Horace Harding  
Expressway, north west corner of 185<sup>th</sup> Street. Block 7067,  
Lot 50, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Application granted on  
condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the  
Rules of Practice and Procedure, a reopening, and an  
extension of term for the continued use of an automotive  
service station, which expired on March 12, 2004; and

WHEREAS, a public hearing was held on this  
application on September 25, 2012, after due notice by  
publication in *The City Record*, with continued hearings on  
October 30, 2012, and November 15, 2012, and then to  
decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site  
and neighborhood examinations by Commissioner Montanez  
and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens,  
recommends approval of this application, with the condition  
that the term be limited to five years due to concerns regarding  
the maintenance of the site; and

WHEREAS, the Community Board requested that the  
applicant undertake the following remediation measures: (1)  
clean the graffiti off the building; (2) replace the sidewalk; (3)  
remove the empty barrels located on the corner of 185<sup>th</sup> Street  
and Booth Memorial Avenue; (4) repair the rear wall and  
repair the wall on the west side of the building; (5) repair the  
fence between the gas station and the adjacent property; (6)  
remove the boat being stored on the site; (7) remove the  
“Mechanic on Wheels” van from the site; and (8) restrict

vehicles from parking on the site unless they are awaiting  
service; and

WHEREAS, a representative of the Auburndale  
Improvement Association, Inc., provided testimony citing  
similar concerns to those of the Community Board and also  
requesting that the term of the grant be limited to five years;  
and

WHEREAS, the site is an irregularly-shaped corner lot  
located at the intersection of the Horace Harding Expressway,  
185<sup>th</sup> Street, and Booth Memorial Avenue, within a C2-2 (R3-  
1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since January 20, 1959 when, under the  
subject calendar number, the Board granted a variance to  
permit the construction of a gasoline service station with  
accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been  
amended and the term extended by the Board at various  
times; and

WHEREAS, on December 13, 1994, the Board  
granted a ten-year extension of term, to expire on March 12,  
2004; and

WHEREAS, most recently, on October 16, 2001, the  
Board granted an amendment to permit the construction of a  
metal canopy over new gasoline pump islands and to allow  
the alteration of the sales area to provide an attendant’s  
booth; and

WHEREAS, the applicant now requests an additional  
extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may  
permit an extension of term; and

WHEREAS, at hearing, the Board directed the  
applicant to address the concerns raised by the Community  
Board; and

WHEREAS, in response, the applicant states that the  
maintenance concerns raised by the Community Board have  
been addressed, as the graffiti has been removed, the  
sidewalk has been repaired, the empty barrels and other  
debris have been removed, the building has been painted,  
the fence has been repaired, and the boat has been removed  
from the site; and

WHEREAS, the applicant states that the van  
referenced by the Community Board is an emergency repair  
van owned and operated by the service station repair facility;  
and

WHEREAS, based upon the above, the Board finds  
that the requested extension of term is appropriate with  
certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and  
Appeals *waives* the Rules of Practice and Procedure, *reopens*  
and *amends* the resolution, dated January 20, 1959, so that as  
amended this portion of the resolution shall read: “to extend  
the term for five years from the date of this grant, to expire  
on December 4, 2017; *on condition* that all use and  
operations shall substantially conform drawings filed with  
this application marked ‘Received July 11, 2012’-(2) sheets;  
and *on further condition*:



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# MINUTES

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THAT the term of the grant will expire on December 4, 2017;

THAT the site will be maintained free of debris and graffiti;

THAT signage will comply with C2 district regulations

THAT parking on the site is limited to vehicles awaiting service;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 4, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401076759)

Adopted by the Board of Standards and Appeals, December 4, 2012.

-----

## 311-71-BZ

APPLICANT – Eric Palatnik, P.C., for SunCo, Inc. (R&M), owner.

SUBJECT – Application March 13, 2012 – Amendment (§11-412) to permit the conversion of automotive service bays to an accessory convenience store of an existing automotive service station (Sunoco); Extension of Time to obtain a Certificate of Occupancy which expired July 13, 2000; waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 1907 Cropsy Avenue, northeast corner of 19<sup>th</sup> Avenue. Block 6439, Lot 5, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on June 19, 2012, after due notice by publication in *The City Record*, with continued hearings on September 25, 2012 and October 30, 2012, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of 19<sup>th</sup> Avenue and Cropsy Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 11, 1927 when, under BSA Cal. No. 454-27-BZ, the Board granted a variance to permit the construction of an extension of an existing garage for the storage of more than five motor vehicles; and

WHEREAS, on October 12, 1971, under the subject calendar number, the Board granted a reduction in floor area and reconstruction of an automotive service station with accessory uses, pursuant to ZR § 11-412; and

WHEREAS, subsequently, the grant has been amended by the Board at various times; and

WHEREAS, most recently, on July 13, 1999, the Board granted an amendment pursuant to ZR § 11-412 to permit the installation of an overhead canopy and the alteration of the permitted signage; and

WHEREAS, the applicant now seeks an amendment to eliminate the automotive repair service use and convert the automotive repair bays to an accessory convenience store; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the accessory convenience store is contained within a completely enclosed building; and (ii) the accessory convenience store has a maximum retail selling space of 2,500 sq. ft. or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the proposed convenience store is located within an enclosed building and has a retail selling space of less than 2,500 sq. ft. or 25 percent of the zoning lot area; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, at hearing, the Board questioned whether the signage complies with C1 district regulations, and raised concerns about the buffering between the subject site and the adjacent residential uses to the east; and

WHEREAS, in response, the applicant submitted a signage analysis which indicates that the signage on the site complies with C1 district regulations, and submitted revised plans reflecting that there is an existing six-ft. high fence with privacy slats buffering the site from the adjacent residential uses to the east, and the lighting on the site will not spill over to the residential uses; and

WHEREAS, based upon its review of the record, the Board finds the amendment to the approved plans is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *amends* the resolution, dated October 12, 1971, so that as amended this portion of the resolution shall read: “to permit the noted site modifications; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received October 11, 2012’–(7) sheets; and *on*

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*further condition:*

THAT all signage will comply with C1 zoning district regulations;

THAT all lighting will be directed downward and away from adjacent residential uses;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 300788592)

Adopted by the Board of Standards and Appeals December 4, 2012.

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## 84-91-BZ

APPLICANT – Eric Palatnik, P.C., for Ronald Klar, owner.  
SUBJECT – Application May 17, 2012 – Extension of Term of a previously granted variance (§72-21) which permitted professional offices (Use Group 6) in a residential building which expires on September 15, 2012. R4A zoning district.  
PREMISES AFFECTED – 2344 Eastchester Road, east side south of Waring Avenue, Block 4393, Lot 17, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for an office building (Use Group 6) within an R4A zoning district, which expired on September 15, 2012; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2012, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Otley-Brown; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application with the condition that the attic not be used for office space or storage; and

WHEREAS, the site is located on the east side of Eastchester Road, south of Waring Avenue, within an R4A zoning district; and

WHEREAS, the site is occupied by a two-story building with basement and attic, and a total floor area of 5,291.89 sq. ft.; and

WHEREAS, on September 15, 1992, under the subject calendar number, the Board granted a variance to permit within an R3-2 zoning district, the legalization of the conversion of the subject building with medical offices (Use Group 4) in the basement and residential uses on the first and second floors to professional offices (Use Group 6B) throughout, for a term of ten years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board; and

WHEREAS, most recently, on July 15, 2008, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on September 15, 2012; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, at hearing, the Board directed the applicant to remove the signage affixed to the building; and

WHEREAS, in response, the applicant submitted photographs reflecting that the signage has been removed from the building; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted revised plans reflecting that the attic will not be used for office space or storage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 15, 1992, so that as amended this portion of the resolution shall read: “to extend the term of the grant for a period of ten years from September 15, 2012, to expire on September 15, 2022; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition:*

THAT the term of the variance shall expire on September 15, 2022;

THAT the attic space will not be used for office space or storage;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 4, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 210019530)

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Adopted by the Board of Standards and Appeals,  
December 4, 2012.

## 5-96-BZ

APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.

SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of an approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' west of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.

## COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, the premises is located on the south side of St. John's Place, between Classon Avenue and Franklin Avenue, within an R7-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 29, 1919 when, under BSA Cal. No. 263-19-BZ, the Board granted a variance to permit the construction of a one-story building to be used for the storage of more than five motor vehicles; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on January 18, 1966, under BSA Cal. No. 327-63-BZ, the Board granted a change in use to permit the assembly of mirrors into frames, the storage and cutting of sheet glass, the manufacturing of plastic and wood frames and novelties, with an off-street loading berth; and

WHEREAS, on March 18, 1997, under the subject calendar number, the Board reinstated the expired variance and legalized a change in use to a public parking garage for not more than 150 cars (Use Group 8), for a term of ten years; and

WHEREAS, most recently, on February 2, 2010, the

Board granted a ten year extension of term, to expire March 18, 2017, an extension of time to obtain a certificate of occupancy to February 10, 2011, and an amendment to the previously approved plans to legalize the modification of the parking layout and the installation of 75 two-level automobile stacking devices; and

WHEREAS, the applicant now requests an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that the requested extension of time is necessary to resolve the open violations issued against the site; and

WHEREAS, at hearing, the Board questioned whether the automobile stacking requirements comply with Materials and Equipment Acceptance Division ("MEA") requirements, in accordance with the prior grant; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the Office of Technical Certification and Research ("OTCR") has replaced the MEA division, but that the substantive MEA conditions have been adequately addressed; and

WHEREAS, specifically, the architect states that the ceiling height, which is a minimum of 12'-0" in height, provides adequate height for the stackers and sprinkler coverage, the floor loads are not an issue because the stackers are located on the ground floor, the garage is sprinklered, and the parking spaces comply with the DOB standard size of 8'-6" by 18'-0"; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 18, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to December 4, 2014; *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application; and *on further condition*:

THAT the term of this grant will expire on March 18, 2017;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 4, 2014;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB App. No. 310233841)

Adopted by the Board of Standards and Appeals,

# MINUTES

December 4, 2012.

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**96-00-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 4 East 77<sup>th</sup> Street Company, owner.

SUBJECT – Application July 23, 2012 – Extension of Term (§11-411) of an approved variance which permitted an art gallery on a portion of the second floor in an existing five-story building which expired on August 8, 2010; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. R8B/R10 zoning district.

PREMISES AFFECTED – 4 East 77<sup>th</sup> Street, south side of East 77<sup>th</sup> Street, between Fifth and Madison Avenues, Block 1391, Lot 69, Borough of Manhattan.

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a portion of the second floor of a five-story building as an art gallery, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the south side of East 77<sup>th</sup> Street between Fifth Avenue and Madison Avenue, partially in an R8B zoning district within Limited Height District No. 1A and partially in an R10 zoning district within the Special Parks Improvement District; and

WHEREAS, the site has 25 feet of frontage along East 77<sup>th</sup> Street, a depth of 102.17 feet, and a total lot area of 2,554 sq. ft.; and

WHEREAS, the site is occupied by a five-story mixed-use building, with a 985 sq. ft. portion of the second floor occupied as a commercial art gallery (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 27, 1961 when, under BSA Cal. No. 210-61-BZ, the Board granted a variance to permit the use of a portion of the second floor of the existing five-story and cellar building as an art gallery, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on August 8, 2000, under the subject calendar number, the Board granted the reestablishment of the variance for ten years, to expire on August 8, 2010, and granted an amendment to permit the expansion of the floor area occupied by the art gallery from 659 sq. ft. to 985 sq. ft.; and

WHEREAS, the applicant now requests an additional ten-year extension of the term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 8, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of the term for ten years from August 8, 2010, to expire on August 8, 2020, and an extension of time to obtain a certificate of occupancy to December 4, 2013; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked ‘Received October 23, 2012’-(1) sheet; and *on further condition*:

THAT the term of the grant will expire on August 8, 2020;

THAT the above condition will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 4, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 4018275640)

Adopted by the Board of Standards and Appeals, December 4, 2012.

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**209-04-BZ**

APPLICANT – Eric Palatnik, P.C., for Waterfront Resort, Inc., owner.

SUBJECT – Application August 14, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use. M2-1 zoning district, which expired on July 19, 2012.

PREMISES AFFECTED – 109-09 15<sup>th</sup> Avenue, corner lot of 15<sup>th</sup> Avenue and 110<sup>th</sup> Street. Block 4044, Lot 60. Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application granted on

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condition.

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the enlargement of an existing industrial building in an M2-1 zoning district and its conversion to residential use, which expired on July 19, 2012; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located on the northwest corner of 15<sup>th</sup> Avenue and 110<sup>th</sup> Street, within an M2-1 zoning district; and

WHEREAS, the site is currently occupied by a three-story warehouse building, with a total floor area of 42,000 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 2005 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing industrial building and its conversion to residential use; substantial construction was to be completed by July 19, 2009, in accordance with ZR § 72-23; and

WHEREAS, on the same date, the Board granted a companion application under BSA Cal. No. 210-04-A to permit construction in the bed of a mapped street; and

WHEREAS, on August 23, 2007, the Board issued a letter of substantial compliance approving minor modifications to the approved plans; and

WHEREAS, on April 28, 2009, the Board granted an extension of the time to complete construction for a term of three years from the expiration of the prior grant, to expire on July 19, 2012; and

WHEREAS, most recently, on June 18, 2012, the Board issued a letter of substantial compliance approving minor modifications to the approved plans; and

WHEREAS, the applicant now requests an additional extension of time to complete construction of the project; and

WHEREAS, the applicant represents that the construction has not been completed due to financing delays; and

WHEREAS, at hearing the Board questioned whether the applicant had obtained the required waterfront certification from the City Planning Commission (“CPC”) pursuant to ZR § 62-711; and

WHEREAS, in response, the applicant submitted a copy of the waterfront certification approval which was issued by

CPC on May 24, 2007; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 19, 2005, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on December 4, 2016; *on condition:*

THAT substantial construction shall be completed by December 4, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401843617)

Adopted by the Board of Standards and Appeals, December 4, 2012.

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## 143-07-BZ

APPLICANT – Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application July 16, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a three-story and cellar synagogue, which expired on July 22, 2012. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, northeast corner of Strickland Avenue and East 64<sup>th</sup> Street, Block 8633, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of a three-story and cellar synagogue with accessory religious-based preschool, which expired on July 22, 2012; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southeast corner of Strickland Avenue and East 64<sup>th</sup> Street, within an R2 zoning district; and

WHEREAS, on July 22, 2008, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story and cellar synagogue with accessory religious-based preschool, contrary to the underlying zoning district regulations for front and side yards, floor area and floor area ratio, front wall height, sky exposure plane, and parking; and

WHEREAS, substantial construction was to be completed by July 22, 2012, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant represents that the owner is now prepared to proceed with construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 22, 2008, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on December 4, 2016; *on condition*:

THAT substantial construction will be completed by December 4, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 302279488)

Adopted by the Board of Standards and Appeals, December 4, 2012.

## 135-46-BZ

APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.

SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment

(§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.

PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38<sup>th</sup> Street, between Ryder Avenue and East 38<sup>th</sup> Street, Block 8555, Lot 37, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for continued hearing.

## 812-61-BZ

APPLICANT – Peter Hirshman, for 80 Park Avenue Condominium, owner.

SUBJECT – Application June 28, 2012 – Extension of Term (§11-411) of approved variance permitting the use of accessory multiple dwelling garage for transient parking, which expires on October 24, 2012. R10, R8B zoning district.

PREMISES AFFECTED – 74-82 Park Avenue, southwest corner of East 39<sup>th</sup> Street and Park Avenue, Block 868, Lot 7502, Borough of Manhattan.

## COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

## 165-91-BZ

APPLICANT – Law Offices of Stuart A. Klein, for United Talmudical Academy, owner.

SUBJECT – Application August 17, 2012 – Extension of Term of approved Special Permit (§73-19) which permitted the construction and operation of a school (UG 3) which expires on September 15, 2012. M1-2 zoning district.

PREMISES AFFECTED – 45 Williamsburg Street West, aka 32-46 Hooper Street, Block 2203, Lot 20, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 114-12-A

APPLICANT – Leavitt, Kerson & Duane by Paul E. Kerson for Astoria Landing Inc., owner.

SUBJECT – Application April 24, 2012 – Appeal challenging Department of Buildings’ determination that an existing sign is not a legal non-conforming advertising sign. R5B zoning district.

PREMISES AFFECTED – 24-59 32<sup>nd</sup> Street, 32<sup>nd</sup> Street at Grand Central Parkway Service Road, Block 837, Lot 95, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Appeal Denied.

**THE VOTE TO GRANT** –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

**THE RESOLUTION** –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Borough Commissioner of the Department of Buildings (“DOB”), dated March 27, 2012, denying Application No. 40069501 from registration for a sign at the subject site (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration.

This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 1, Queens, recommends approval of the application; and

WHEREAS, the subject site is located at the corner of 32<sup>nd</sup> Street and the Grand Central Parkway Service Road, in an R5 zoning district; and

WHEREAS, the site has a lot area of approximately 3,462.5 sq. ft. and is occupied by a three-story residential building (the “Building”) and a sign with a surface area measuring 35 feet by 20 feet (700 sq. ft.) affixed to the Building (the “Sign”); and

WHEREAS, the Sign is located approximately 200 feet from the Grand Central Parkway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the Building (the “Appellant”); and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of its sign registration based on (1) its reliance on DOB’s issuance of permits for the Sign in 1941 and 1981; and (2) its assertion that New York State courts and Building Code § 27-111 allow for the continuation of pre-existing non-conforming uses; and

WHEREAS, the Appellant states that it has also been before the Environmental Control Board (ECB) defending its position on the Sign’s legality and has filed an action in the Queens County Supreme Court seeking a declaratory judgment legalizing the Sign; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

### REGISTRATION REQUIREMENT

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

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Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a guidance document provided by DOB sets forth the instructions for filing under Rule 49 and asserts that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB -issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB docket/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and  
REGISTRATION PROCESS

WHEREAS, the parties agree that prior to March 8, 2012, the Appellant submitted a Sign Registration Application for the Sign; and

WHEREAS, on March 8, 2012, DOB notified the Appellant that its Sign Registration Application failed to establish any basis for the sign to remain, in that it was an advertising sign in an R5 zoning district that had existed for more than ten years since the district became R5, contrary to ZR § 52-731; and

WHEREAS, on March 22, 2012, the Appellant responded that the sign was “non-conforming” and permitted to remain because the Department previously issued permits for the Sign; and

WHEREAS, by letter dated March 27, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the “documentation inadequate to support the registration and as such the sign is rejected from registration;” and

## RELEVANT STATUTORY PROVISIONS

### ZR § 52-11

#### General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

\* \* \*

### ZR § 52-731

#### Advertising signs

In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

\* \* \*

### Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control

of such outdoor advertising company in accordance with the following provisions:

(1)The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

### RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

### RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming...

\* \* \*

### RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

(a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or

(b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

## THE APPELLANT’S POSITION



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WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) DOB issued permits for the Sign in 1941 and 1981; and (2) New York State courts and Building Code § 27-111 allow for the continuation of pre-existing non-conforming uses; and

1. DOB May Not Rescind Permits Issued in 1941 and 1981

WHEREAS, the Appellant states that prior to purchasing the Building, it determined that the Sign was legal based on the existence of the 1941 and 1981 permits, which remained in effect; and

WHEREAS, the Appellant asserts that it purchased the Building in reliance on the fact that the Sign generates income; and

WHEREAS, the Appellant represents that the income generated by the Sign makes the Building financially viable and the termination of the Sign and the loss of its revenue would be a hardship; and

WHEREAS, the Appellant asserts that DOB may not reverse the position it took in 1981 that the Sign was legally permitted, and to do so would be inequitable; and

2. Legal Precedent Supports the Continuation of Pre-Existing Non-Conforming Uses

WHEREAS, the Appellant asserts that because DOB issued permits for the Sign in 1941 and 1981, the sign is “grandfathered” and, thus, rendered lawful as a pre-existing non-conforming use; and

WHEREAS, the Appellant cites to City of New York v. 330 Continental LLC, 60 A.D. 3d 226 (1<sup>st</sup> Dept. 2009) for the principle that a use established before the enactment of the current Zoning Resolution is “grandfathered” and not subject to the regulations of the current Zoning Resolution; and

WHEREAS, the Appellant notes that the facts in 330 Continental concern a hotel use which was permitted in a residential zoning district under the 1916 Zoning Resolution but is not permitted under the 1961 Zoning Resolution; and

WHEREAS, the Appellant cites to the court’s Footnote 11, which states “[i]n substance, ZR Section 52-11 permits the continuation of a ‘non-conforming use’ (defined in ZR Section 12-10) notwithstanding the inconsistency of that use with the current ZR, if the use lawfully existed before the adoption of the current ZR” See 330 Continental at 235; and

WHEREAS, the Appellant asserts that all violations pending before ECB and any enforcement action by DOB must be dismissed and enjoined because the Sign has been in existence prior to the adoption of the 1961 Zoning Resolution; and

WHEREAS, further, the Appellant states that DOB issued permits for the Sign in 1941 and 1981 and cannot now rescind those permits; and

WHEREAS, the Appellant also cites to Isaacs v. West 34<sup>th</sup> Apartments, 36 A.D. 3d 414 (1<sup>st</sup> Dept. 2007) and New York State Clerks Association v. Crosson, 269 A.D. 2d 335 (1<sup>st</sup> Dept. 2000) in support of its assertion that a grandfathering principle protects the Sign from enforcement;

and

WHEREAS, the Appellant cites to the following excerpts for support (1) “the Building Code does not apply since the building pre-dated its effective date (see 27-111), and exceptions to the grandfathering provision are inapplicable” Isaacs at 415-416 and (2) “contrary to petitioner’s contention, grandfathering, in the present context, although productive of some transitional salary inequities, is nonetheless a rationally justifiable means of facilitating the orderly implementation . . . and does not offend due process” New York State Clerks Association at 336; and

WHEREAS, finally, the Appellant cites to the Building Code Section 27-111 (Continuation of Lawful Existing Use) to support its position that the Building Code dictates that non-conforming uses established before a statutory change may continue even after the change renders them non-conforming; and

WHEREAS, Building Code Section 27-111 states, in pertinent part:

The lawful occupancy and use of any building, including the use of any service equipment therein, existing on the effective date of this code or thereafter constructed or installed in accordance with prior code requirements, as provided in Section 27-105 of Article 1 of this subchapter, may be continued unless a retroactive change is specifically required by the provisions of this code; and

WHEREAS, accordingly, the Appellant asserts that the Sign is grandfathered and may remain in light of the cited case law, other legal authority, and a prohibition on DOB from rescinding earlier permits; and

DOB’S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the Sign in the subject R5 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that “a non-conforming use may be continued, except as otherwise provided in this Chapter;” and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

[i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the

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# MINUTES

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original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Sign, the Appellant must demonstrate that: (1) the Sign is non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the sign became non-conforming;” and

WHEREAS, DOB asserts that the Appellant has failed to provide adequate evidence to demonstrate that the advertising sign has ever been “non-conforming” in the sense that it was lawfully established per ZR § 12-10 as “[a]ny lawful use...which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto;” and

WHEREAS, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted proof of a permit issued by DOB in 1941 for a painted wall sign and states that if it were to assume that the sign existed lawfully on December 15, 1961, based on the 1941 permit, on December 15, 1961, it would have become “non-conforming;” and

WHEREAS, DOB states that even if the Sign existed lawfully on December 15, 1961, such a sign would have become non-conforming on that date when the site was zoned R5 and the 1963/current version of ZR § 52-731 requires that the Sign be removed within ten years of it becoming non-conforming, which was on December 15, 1971; and

WHEREAS, as to the effect of DOB’s issuance of permits in 1941 and 1981, DOB asserts that it cannot be estopped from enforcing the Zoning Resolution and the requirement that the Sign use be terminated by December 15, 1971; and

WHEREAS, DOB cites to Parkview Associates v. City of New York, 71 N.Y.2d 274, 282 (1988) for its ability to correct its erroneous issuance of the permit in 1981 when the use should have been discontinued in 1971; and

WHEREAS, DOB distinguishes the New York Supreme Court cases the Appellant cites as relevant case law establishing precedent for “grandfathering” the subject sign because the cited cases all lack an explicit Zoning Resolution provision which prohibits the use of non-conforming advertising signs in residential zoning districts after a certain period of time; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registration is appropriate because the Appellant does not comply with ZR § 52-731; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on December 15, 1961 when it was mapped to be within an

R5 zoning district, such use should have been terminated by December 15, 1971; and

WHEREAS, as to the Appellant’s assertion that DOB has improperly changed its position on the legality of the signs, the Board supports DOB’s position that it may correct the erroneous issuance of its permits; and

WHEREAS, further, the Board notes that the presence of a permit does not render a use lawful, when the permit was issued erroneously; and

WHEREAS, the Board declines to take a position on the fairness of DOB’s rejection of the registration after erroneously issuing a permit in 1981, but it does note that the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Sign was lawfully non-conforming at relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been terminated on or before December 15, 1971; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before December 15, 1971, pursuant to ZR § 52-731; and

WHEREAS, the Board agrees with DOB that the three cases the Appellant cites can be distinguished from the subject facts in that (1) 330 Continental, the only case that involves the Zoning Resolution, does not involve a specific provision such as ZR § 52-731 which sets forth a specific timeframe for termination of the use; and (2) Isaacs and New York Clerks do not involve the Zoning Resolution and are thus inapplicable but, similarly, do not appear to involve an explicit provision that imposes a termination date for a non-conforming use; and

WHEREAS, the Board also finds that the Appellant’s reference to Building Code § 27-111 is misplaced in that even if it were relevant to the subject sign use, it relates to Building Code compliance and is not relevant in the context of DOB’s enforcement against a sign use based on zoning non-conformance; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-731 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject Sign) were able to remain for ten years so long as they were lawful on December 15, 1961 (per ZR § 12-10); and

WHEREAS, the Board notes that the adoption of the 1961 Zoning Resolution did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses were able to exist in derogation of the Zoning Resolution, but only for a specified period; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board states that per the Court of Appeals, municipalities may adopt laws regarding previously existing nonconforming uses. 550 Halstead Corp. v. Zoning Bd. Of Appeals, 1 N.Y.3d 561, 562 (2003);

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Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, “[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[,]” and “municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them.” 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp. v. Linden (30 N.Y.2d 160, 331 N.Y.S.2d 397 (1972)), the Court stated, “the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses” 30 N.Y.2d at 164; and

WHEREAS, lastly, the Board notes that ZR § 52-731 is not contrary to ZR § 52-11, which states that “a nonconforming use may be continued, except as otherwise provided in [Chapter 2]” because the Board notes that nonconforming uses are protected by Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant’s registration of the Sign.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 27, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, December 4, 2012.

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## 136-12-A

APPLICANT – Fried Frank, LLP for Van Wagner Communications, lessee.

OWNER OF PREMISES – Point 27 LLC.

SUBJECT – Application April 26, 2012 – Appeal from Department of Buildings’ determination that an existing sign is not a legal non-conforming advertising sign. R4 zoning district.

PREMISES AFFECTED – 37-27 Hunter’s Point between Greenpoint Avenue and 38<sup>th</sup> Street, Block 234, Lot 31, Borough of Queens.

## COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter

from the Borough Commissioner of the Department of Buildings (“DOB”), dated March 27, 2012, denying Application No. 40062501 from registration for a sign at the subject site (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on Hunters Point Avenue between Greenpoint Avenue and 38<sup>th</sup> Street, in an R4 zoning district; and

WHEREAS, the site has a lot area of approximately 2,090 sq. ft. and is occupied by a three-story residential building (the “Building”) and a sign with a surface area measuring 14 feet by 48 feet (672 sq. ft.) affixed to the eastern wall of the Building (the “Sign”); and

WHEREAS, the Sign is located approximately 133 feet from the Queens-Midtown Expressway, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the “Appellant”); and

WHEREAS, the Appellant seeks a reversal of DOB’s rejection of its sign registration based on (1) DOB’s issuance of permits for the Sign in 1980 and 1989 allowing for the construction and maintenance of an advertising sign; and (2) its assertion that it provided sufficient evidence in compliance with the requirements of Rule 49 for the registration of the Sign; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being

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maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the Appellant asserts that the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

WHEREAS, the Appellant cites to a guidance document provided by DOB, which sets forth the instructions for filing under Rule 49 and asserts that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB –issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

## REGISTRATION PROCESS

WHEREAS, the parties agree that on April 4, 2011, the Appellant submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company

Sign Profile, attaching the following documentation: (1) a diagram of the Sign showing its size and distance from the Long Island Expressway; (2) Plan/Work approval Application No. 40012491 and plans for an illuminated sign with “changeable copy,” approved by DOB on October 10, 1989; and (3) tax photos issued by the Department of Finance for the years 1982 to 1987 showing the Sign; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to “Failure to provide proof of compliance with ZR § 52-731 for advertising signs in residential districts – Sign in R zone” in that it was an advertising sign in an R4 zoning district that had existed for more than ten years after the district was zoned R4; and

WHEREAS, by letter dated January 12, 2012, the Appellant submitted a response to DOB, asserting that the sign was non-conforming and permitted to remain because DOB issued permits for the Sign notwithstanding ZR § 52-731, in 1980 and 1989; and

WHEREAS, the Appellant notes that its 1989 application and permit identify that the Sign is located in a residential zoning district; and

WHEREAS, the Appellant states that in its communication with DOB, it asserted the position that the DOB permit was sufficient for registration along with evidence that the sign was an advertising sign prior to 1979 (including deeds and DOB records); and

WHEREAS, by letter dated March 27, 2012, DOB issued the determination which forms the basis of the appeal, stating that it found the “documentation inadequate to support the registration and as such the sign is rejected from registration;” and

## RELEVANT STATUTORY PROVISIONS

### ZR § 52-11

#### General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

\* \* \*

### ZR § 52-731

#### Advertising signs

In all #Residence Districts#, a #non-conforming advertising sign# may be continued for ten years after December 15, 1961, or such later date that such #sign# becomes #non-conforming#, providing that after the expiration of that period such #non-conforming advertising sign# shall terminate.

\* \* \*

### Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

(1) The list shall include all signs, sign structures and sign locations located (i) within a distance

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of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming...

\* \* \*

RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

- (a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or
- (b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) DOB’s issuance of permits in 1980 and 1989 constitutes evidence of the Sign’s lawfulness, and (2) it provided sufficient evidence

in compliance with the requirements of Rule 49 for the registration of the Sign; and

### 1. DOB’s Permit Issuance is Evidence of the Sign’s Lawfulness

WHEREAS, the Appellant sets forth the following history for the Sign: (1) in the early to mid-1970s, a painted wall sign (which did not require a permit from DOB until 1968) occupied the site; (2) the Sign began functioning as an advertising sign in the early to mid-1970s; (3) in 1980, under permit 226/80, the Appellant obtained a DOB permit for an off-site advertising sign on a sign structure; (4) in 1989, under Application No. 400012491, DOB approved plans for an illuminated advertising sign with “changeable copy,” measuring 14 feet by 48 feet, stating that it complied with ZR § 52-83; and

WHEREAS, the Appellant asserts that documentary evidence including the DOB permits from 1980 and 1989 and affidavits from an employee and an officer of the sign company stating that the sign existed from the 1970s establishes that an illuminated advertising sign has existed at the site since before 1980; and

WHEREAS, the Appellant asserts that in 1980 and DOB had the opportunity to evaluate the legality of the Sign as an advertising sign in a residential zoning district and to determine whether or not it was lawful; and

WHEREAS, the Appellant asserts that instead of taking a position that the signs were unlawful, DOB issued permits in 1980 and 1989 for the continued use of the Sign as a non-conforming advertising sign in a residential zoning district; and

WHEREAS, the Appellant asserts that in reliance on the DOB permits, it has continued to invest in repairs, maintenance, and marketing for the Sign for 23 years since the last permit issuance in 1989; and

WHEREAS, the Appellant asserts that DOB’s change in position on the legality of the Sign is arbitrary, contrary to public policy, and detrimental to business; and

WHEREAS, the Appellant notes that the zoning has not changed since 1989 when DOB last issued a permit for the Sign and determined it to be legal; and

WHEREAS, the Appellant reiterates that it has submitted permits which it asserts should provide sufficient proof of legal establishment for the Sign to be registered; and

### 2. The Appellant has Satisfied Rule 49’s Registration Requirements

WHEREAS, the Appellant states that when Rule 49 was enacted, it submitted evidence in accordance with the rule for the Sign; and

WHEREAS, specifically, the Appellant asserts that it submitted all four of the following preferred forms of evidence listed in the Rule 49 guidance document: (1) DOB-issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indication of sign permit approval; and (4) a photograph from the Department of Finance; and

WHEREAS, the Appellant concludes that because it

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submitted four forms of Rule 49 preferred evidence, as well as other supporting evidence, DOB must accept the sign registration application; and

## DOB'S POSITION

WHEREAS, DOB asserts that zoning regulations prohibit the sign in the subject R4 zoning district, as set forth at ZR § 22-30, which does not include advertising signs among the permitted uses; and

WHEREAS, DOB states that non-conforming advertising signs are permitted in residential zoning districts only when they comply with Chapter 2 of Article 5 of the Zoning Resolution; and

WHEREAS, specifically, DOB cites to ZR § 52-11, which states that "a non-conforming use may be continued, except as otherwise provided in this Chapter;" and

WHEREAS, DOB continues by citing ZR § 52-731, which expressly provided a limitation on the use of non-conforming advertising signs in residential zoning districts; the original text states that:

[i]n all Residence Districts, a non-conforming advertising sign may be continued for eight years after the effective date of this resolution or such later date that such sign becomes non-conforming, provided that after the expiration of that period such non-conforming advertising sign shall terminate; and

WHEREAS, DOB notes that on August 22, 1963, the original ZR § 52-731 was amended to allow a ten-year, rather than an eight-year, amortization period; the 1963 version of the text, allowing for a ten-year amortization period remains in effect today; and

WHEREAS, DOB states that in order to maintain the Sign, the Appellant must demonstrate that: (1) the Sign is non-conforming (a lawful pre-existing non-conforming use, as defined at ZR § 12-10) and (2) it has been less than ten years since the sign became non-conforming;" and

WHEREAS, DOB asserts that the Appellant has failed to provide adequate evidence to demonstrate that the advertising sign has ever been "non-conforming" in the sense that it was lawfully established per ZR § 12-10 as "[a]ny lawful use...which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto;" and

WHEREAS, DOB states that the lawful use must have been established on December 15, 1961 or at the time of a relevant zoning amendment; and

WHEREAS, DOB notes that the Appellant has submitted an affidavit from its CEO indicating that the Appellant operated the Sign from the "early or mid-1970s" until 1997 and prior to that "the sign had been a painted wall sign . . . (that) displayed off-site advertising for an oil company;" and

WHEREAS, DOB states that it finds the affidavit to be vague; uncorroborated by objective evidence like a photograph or a permit; and potentially biased, given the affiant's position as CEO for the Appellant; and

WHEREAS, accordingly, DOB rejects the affidavit as sufficient to prove lawful establishment of the Sign on December 15, 1961; and

WHEREAS, however, DOB states that assuming *arguendo* that the Sign existed lawfully on December 15, 1961, an argument that the Appellant does not even make, such a sign would have become non-conforming on that date when the site was zoned R4 and the 1963/current version of ZR § 52-731 requires that the Sign be removed within ten years of it becoming non-conforming, which was on December 15, 1971; and

WHEREAS, as to the effect of DOB's issuance of permits in 1980 and 1989, DOB asserts that it cannot be estopped from enforcing the Zoning Resolution and the requirement that the Sign use be terminated by December 15, 1971; and

WHEREAS, DOB cites to Parkview Associates v. City of New York, 71 N.Y.2d 274, 282 (1988) for its ability to correct its erroneous issuance of the permits in 1980 and 1989 when the use should have been discontinued in 1971; and

WHEREAS, accordingly, DOB asserts that its rejection of the sign registration is appropriate because the Appellant does not comply with ZR § 52-731; and

WHEREAS, further, DOB notes that the Appellant's Sign Registration Application incorrectly states that the Sign has non-conforming status pursuant to ZR § 42-55, a section that applies to signs in manufacturing zoning districts; and

CONCLUSION  
WHEREAS, the Board agrees with DOB that the language of ZR § 52-731 is clear and requires that because any advertising sign at the site became a non-conforming use on December 15, 1961 when it was mapped to be within an R4 zoning district, such use should have been terminated by December 15, 1971; and

WHEREAS, the Board finds that the Appellant's assertions about the sufficiency of its sign registration pursuant to Rule 49 are misplaced in that Rule 49 does not provide a waiver to ZR § 52-731; and

WHEREAS, as to the Appellant's assertion that DOB has improperly changed its position on the legality of the signs, the Board supports DOB's position that it may correct the erroneous issuance of its permits; and

WHEREAS, further, the Board notes that the presence of a permit does not render a use lawful, when the permit was issued erroneously; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing permits in 1980 and 1989, but it does note that the Appellant has enjoyed the benefit of the Sign for more than 40 years past the December 15, 1971 date when any sign at the site should have been terminated; additionally, the Board notes that the Appellant noted on its 1989 application that the sign was a non-conforming use in a manufacturing district, per ZR § 52-83 (a section that applies to non-conforming uses in manufacturing and certain commercial zoning districts) which was incorrect as the sign has been in an

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R4 zoning district since December 15, 1961; and

WHEREAS, the Board agrees with DOB that even if the Appellant were to establish that the Sign was lawfully non-conforming at relevant dates, the question is moot since even a lawfully non-conforming sign would have to have been terminated on or before December 15, 1971; and

WHEREAS, accordingly, the Board finds that the advertising sign use should have been terminated on or before December 15, 1971, pursuant to ZR § 52-731; and

WHEREAS, the Board finds that the Appellant has failed to provide evidence that its purported satisfaction of the Sign Registration requirement supersedes the clear, undisputed text of the Zoning Resolution; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Sign.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated March 27, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, December 4, 2012.

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## 140-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Foster Road Development LLC, owner.

SUBJECT – Application April 30, 2012 – Proposed construction of a two-family dwelling located in the bed of a mapped street, contrary to General City Law Section 35. R3A zoning district.

PREMISES AFFECTED – 69 Parkwood Avenue, east side of Parkwood Avenue, 200' south of intersection of Parkwood and Uncas Avenues. Block 6896, Lot 120(tent), Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Staten Island Commissioner Borough Commissioner, dated March 29, 2012, acting on Department of Buildings Application No. 520091329, reads:

Proposed dwelling in the bed of a final mapped street is contrary to Article III, Section 35 of the General City Law; and

WHEREAS, this is an application under General City Law (“GCL”) § 35, to permit the construction of a two-family dwelling on the western portion of the lot located partially within the bed of Vogel Avenue, a mapped street; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, and then to decision December 4, 2012; and

WHEREAS, the subject site is located on the east side of Parkwood Avenue, approximately 200 ft. south of the intersection of Parkwood Avenue and Uncas Avenue, within an R3X (SRD) zoning district; and

WHEREAS, the site has a total lot area of 20,271 sq. ft. and proposed to be divided into two tax lots comprising a through lot that extends from the east side of Parkwood Avenue to the west side of Foster Road; and

WHEREAS, by letter, dated November 28, 2012, the Fire Department states that it does not have any objections to the subject proposal; and

WHEREAS, by letter dated June 18, 2012, the Department of Environmental Protection (“DEP”) states that (1) there are no existing City sewers or existing City water mains within the referenced location and (2) the Amended Drainage Plan No. D-1 (R-1)/TD-5 (R-3), sheet 7 of 11, dated July 2, 2010, for the above-referenced location calls for a future 10-in. diameter sanitary sewer and a 15-in. diameter storm sewer to be installed in Vogel Avenue starting east of Parkwood Avenue; and

WHEREAS, DEP also states that existing Lot 105 and Lot 140 would have no additional benefit from the future 10-in. diameter sanitary sewer and the 15-in. diameter sewer in the bed of Vogel Avenue starting east of Parkwood Avenue, since these lots are fronting the existing 10-in. diameter sanitary sewer and the 4-in. diameter storm sewer in Parkwood Avenue, which are available for connection; and

WHEREAS, further, DOT notes that Tentative Lot 120 would benefit from the above-referenced future sewers in the bed of Vogel Avenue, starting east of Parkwood Avenue fronting the existing 10-in. diameter sanitary sewer and 24-in. diameter storm sewer in Parkwood Avenue and that the future 10-in. diameter sanitary sewer and the 15-in. diameter storm sewer in the mapped portion of Vogel Avenue may be initiated outside of the limits of tentative Lot 120 (formerly part of Lot 25) at no consequence to the City; and

WHEREAS, based on the above conditions, DEP states that it has no objection to the proposed application; and

WHEREAS, by letter dated July 11, 2012, the Department of Transportation (“DOT”) states that due to the lack of connectivity of the mapped street, applicants should de-map this portion of Vogel Avenue through a Uniform Land Use Review Procedure (“ULURP”) which would be a more appropriate since improving Vogel Avenue at this location would involve the taking of a portion of the applicant's property, it is not presently included in DOT's Capital Improvement Program and DOT does not have any intention to acquire it in the future; and

WHEREAS, in response, the applicant states that GCL § 35 empowers the Board to grant a permit for construction in the bed of a mapped street where a proposed street widening or extension has been shown on the official map or plan for ten years or more and the City has not acquired title thereto; and

WHEREAS, the applicant also asserts that a de-mapping is a burdensome process reserved for rare instances such as when the street to be de-mapped is also proposed to be

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acquired from the City and that the Board is the proper venue for the subject application to permit construction in the bed of a mapped street and it is not required to undertake a ULURP action to de-map this portion of Vogel Avenue; and

WHEREAS, therefore, because the City has no plans to improve or widen the referenced street, the applicant requests that the Board approve the subject application to permit construction in the bed of the mapped but unbuilt street pursuant to GCL § 35; and

WHEREAS, the Board agrees with the applicant that the subject application is properly within the scope of a GCL § 35 approval and does not require a ULURP action to de-map the street; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated March 29, 2012, acting on Department of Buildings Application No. 520091329, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 30, 2012" – (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals December 4, 2012.

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## 97-12-A & 98-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.

OWNER OF PREMISES - 620 Properties Associates, LLC.

SUBJECT – Application April 11, 2012 – Appeal challenging Department of Buildings' determination regarding right to maintain existing advertising sign in manufacturing district. M1-5/CL zoning district.

PREMISES AFFECTED – 620 12<sup>th</sup> Avenue, between 47<sup>th</sup> and 48<sup>th</sup> Streets, Block 1095, Lot 11, Borough of Manhattan.

### COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2013, at 10 A.M., for decision, hearing closed.

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## 108-09-A & 109-12-A

APPLICANT – Davidoff Malito & Hatcher LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – Kehley Holding Corp.

SUBJECT – Application April 18, 2012 – Appeal challenging Department of Buildings' determination that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R. §§42-58 and 52-61.

PREMISES AFFECTED – 46-12 Third Avenue, between 46<sup>th</sup> and 47<sup>th</sup> Streets, Block 185, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 26, 2013, at 10 A.M., for decision, hearing closed.

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## 142-12-A

APPLICANT – Sheldon Lobel, P.C., for 108-59 Ditmas Boulevard, owner.

SUBJECT – Application May 3, 2012 – Amendment of a previously approved (BSA Cal No. 187-99-A) waiver of the General City Law Section 35 which permitted the construction of a two family dwelling in the bed of a mapped street (24th Avenue). The amendment seeks to construct a community facility building. R3-2 zoning district.

PREMISES AFFECTED – 24-02 89<sup>th</sup> Street, between Astoria Boulevard and 23<sup>rd</sup> Avenue, Block 1100, Lot 101, Borough of Queens.

### COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 10 A.M., for decision, hearing closed.

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## 205-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communication LLC.

OWNER OF PREMISES – Borden Realty Corporation.

SUBJECT – Application June 29, 2012 – Appeal challenging the Department of Buildings' determination that



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a sign is not entitled to non-conforming use status as an advertising sign. R7-2 /C2-4 (HRW) Zoning District.

PREMISES AFFECTED – 355 Major Deegan Expressway, bounded by Exterior Street, Major Deegan Expressway to the east, Harlem River to the west, north of the Madison Avenue Bridge, Block 2349, Lot 46, Borough of Bronx.

**COMMUNITY BOARD #1BX**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

**REGULAR MEETING**

**TUESDAY AFTERNOON, DECEMBER 4, 2012**

**1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

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**ZONING CALENDAR**

**74-12-BZ**

**CEQR #12-BSA-105K**

APPLICANT – Harold Weinberg, P.E., for Diana Trost, owner.

SUBJECT – Application March 30, 2012 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 252 Exeter Street, west side 350' north of Esplanade and Oriental Boulevard, Block 8742, Lot 2, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 26, 2012, acting on Department of Buildings Application No. 320411700, reads in pertinent

part:

The proposed enlargement of the existing one family residence in an R3-1 zoning district:

- 1- Increases the degree of non-compliance with respect to one side yard and is contrary to Sections 23-461 & 54-31 of the Zoning Resolution.
- 2- Creates non-compliance with respect to floor area and floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
- 3- Creates non-compliance with respect to open space and lot coverage and is contrary to Section 23-141 of the Zoning Resolution.
- 4- Creates non-compliance with respect to rear yard and is contrary to Section 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, 54-31 and 23-47; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication with a continued hearing on November 20, 2012, and then to decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Exeter Street, approximately 420 feet south of Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a single-family home with a floor area of 1,553 sq. ft. (0.37 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,553 sq. ft. (0.37 FAR) to 3,816 sq. ft. (0.92 FAR); the maximum permitted floor area is 2,080 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space of 2,600 sq. ft. (2,704 sq. ft. is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 37.3 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 4'-11" and to maintain the existing side yard along the southern lot line with a width of 8'-6" (two side yards with minimum widths of 5'-0" and 8'-0", respectively, are required); and

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WHEREAS, the proposed enlargement will provide a rear yard with a depth of 21'-5 1/2" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, lot coverage, side yard, and rear yard, contrary to ZR §§ 23-141, 23-461, 54-31 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 30, 2012"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,816 sq. ft. (0.92 FAR); a minimum open space of 2,600 sq. ft.; a maximum lot coverage of 37.3 percent; a side yard with a minimum width of 4'-11" along the northern lot line; and a rear yard with a minimum depth of 21'-5 1/2", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 4, 2012.

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**152-12-BZ**  
**CEQR #12-BSA-134Q**

APPLICANT—Rothkrug Rothkrug & Spector, LLP, for M.S.P. Realty Development, Inc., owner.

SUBJECT – Application May 9, 2012 – Variance (§72-21) to permit construction of a four-story mixed use commercial and residential building, contrary to side yard (§23-462) requirements. C2-4/R6A zoning district.

PREMISES AFFECTED – 146-61 105<sup>th</sup> Avenue, north side of 105<sup>th</sup> Avenue, 34.65' southwest of intersection of 105<sup>th</sup> Avenue and Sutphin Boulevard, Block 10055, Lot 19, Borough of Queens.

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 9, 2012, acting on Department of Buildings Application No. 420327872, reads in pertinent part:

The proposed 3'-0" side yard in C2-4 in R6A zoning district is contrary to Section 33-25 of the Zoning Resolution and requires a variance from the Board of Standards & Appeals; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C2-4 (R6A) zoning district, the proposed construction of a four-story mixed-use commercial/residential building that does not comply with the zoning requirements for side yards, contrary to ZR § 33-25; and

WHEREAS, a public hearing was held on this application on September 25, 2012 after due notice by publication in *The City Record*, with continued hearings on October 23, 2012 and November 20, 2012, and then on decision on December 4, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of 105<sup>th</sup> Avenue between Sutphin Boulevard and Waltham Street, within a C2-4 (R6A) zoning district; and

WHEREAS, the site has a width of approximately 20'-4", a depth of 100'-6", and a total lot area of 2,034 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story mixed-use commercial/ residential building with ground

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floor commercial use and three residential units above (with one dwelling unit on each of the second, third, and fourth floors); and

WHEREAS, the proposed building will have the following complying parameters: a total floor area of 5,219 sq. ft. (2.56 FAR); a commercial floor area of 1,348 sq. ft. (0.66 FAR); a residential floor area of 3,871 sq. ft. (1.90 FAR); lot coverage of 60 percent, a wall height of 40'-0"; a total height of 45'-0"; a front yard with a depth of 10'-0"; a rear yard with a depth of 30'-0"; and no side yard along the eastern lot line; and

WHEREAS, however, the applicant proposes a side yard with a width of 3'-0" along the western lot line (a side yard with a minimum width of 8'-0" is required); and

WHEREAS, the applicant states that the requested side yard relief is necessary for reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the narrowness of the subject lot in combination with the historic driveway easement along the westerly lot line; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-4" cannot feasibly accommodate a complying development because the site is also encumbered by a driveway easement with a width of 3'-0" along the westerly lot line; and

WHEREAS, as to the easement, the applicant submitted a copy of the 1924 agreement that created the driveway easement which encumbers the subject site and the adjacent lot to the west with a common driveway easement with a width of 7'-0" (consisting of 4'-0" along the easterly lot line of the adjacent lot and 3'-0" along the westerly lot line of the subject lot) which extends to a depth of 80'-0"; and

WHEREAS, the applicant notes that pursuant to ZR § 23-462(c), in the subject zoning district "no side yards are required. However, if any open area extending along a side lot line is provided at any level, it shall measure at least eight feet wide for the entire length of the side lot line"; and

WHEREAS, accordingly, the applicant states that the driveway easement requires the applicant to maintain an open area along the side lot line with a width of 3'-0", which results in the need to provide an open area with a width of 8'-0" along the entire length of the side lot line pursuant to ZR § 23-462; and

WHEREAS, the applicant further states that but for the existence of the driveway easement, no side yards would be required for the subject site and the building could be constructed from lot line to lot line; and

WHEREAS, the applicant states that providing the required side yard with a width of 8'-0" along the western lot line results in a complying building with a width of only 12'-4", which would result in constricted floor plates and would be infeasible and impractical to occupy for commercial or residential use; and

WHEREAS, accordingly, the applicant represents that

the side yard waiver is necessary to create a building with a sufficient width; and

WHEREAS, as to the uniqueness of the site, the applicant submitted a 400-ft. radius diagram which reflects that the subject site is the only lot with a width of less than 25'-0" in the surrounding area that is not in common ownership with an adjacent lot, and is the only vacant lot in the surrounding area; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing an as-of-right four-story mixed-use building with a total floor area of 3,330 sq. ft. (1.64 FAR) with ground floor commercial use and three residential units above, and the proposed mixed-use building with a total floor area of 5,219 sq. ft. (2.56 FAR) with ground floor retail use and residential use above; and

WHEREAS, the feasibility study concluded that the as-of-right building would not result in a reasonable return, but that the proposed building would result in a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the surrounding area is characterized by a mix of residential, commercial, and community facility buildings; and

WHEREAS, the applicant notes that the proposed mixed-use commercial/residential building is a conforming use in the underlying district and immediately adjacent to the east of the subject site is an automotive repair shop within a building that extends to the lot line, and directly across 105<sup>th</sup> Avenue from the site is a large medical facility; and

WHEREAS, the applicant represents that the proposed construction of a mixed-use commercial/residential building is consistent with the residential nature of development along 105<sup>th</sup> Avenue as well as the commercial and community facility development along Sutphin Boulevard; and

WHEREAS, the applicant states that the requested side yard waiver would not have a detrimental impact on the adjacent building to the west of the site, as that lot is encumbered with a corresponding 4'-0" wide portion of the subject driveway easement which creates an open area with a width of 7'-0" between the subject building and the adjacent building to the west; and

WHEREAS, the applicant notes that the portion of the easement on the adjacent lot to the west is currently an open area with a paved concrete walkway and planted grass; and

WHEREAS, the applicant further notes that, if not for

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the driveway easement, it could construct an as-of-right building with no side yard along the western lot line; therefore, despite the need for the requested side yard waiver, the proposed building actually has a lesser impact on the adjacent lot to the west than that of an as-of-right building on an unencumbered lot; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship on the site is the result of the narrow width of the lot and the impact of the historical easement, which was put in place in 1924, several decades prior to the imposition of the current zoning regulations; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a result of the lot's pre-existing narrow width and the impact of the historical easement; and

WHEREAS, the applicant states that the proposed mixed-use commercial/residential building is a conforming use which complies with all bulk requirements of the underlying C2-4 (R6A) zoning district, except for the side yard along the western lot line; and

WHEREAS, as noted above, the applicant analyzed a proposal for an as-of-right mixed-use commercial/residential building on the site; however, the applicant determined that the as-of-right proposal was not feasible due to the physical constraints of the site; and

WHEREAS, accordingly the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within a C2-4 (R6A) zoning district, the proposed construction of a four-story mixed-use commercial/residential building that does not comply with the zoning requirements for side yards, contrary to ZR § 33-25; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 12, 2012"-(7) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a total floor area of 5,219 sq. ft. (2.56 FAR); a commercial floor area of 1,348 sq. ft. (0.66 FAR); a residential floor area of 3,871 sq. ft. (1.90 FAR); and a side yard with a width of 3'-0" along the western lot line, as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT this approval is limited to the relief granted by

the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 4, 2012.

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## 210-12-BZ

### CEQR #13-BSA-007M

APPLICANT – Herrick, Feinstein LLP, for 44 West 28<sup>th</sup> Street Penn Plaza Properties, LLC, owner; CrossFit NYC, lessee.

SUBJECT – Application July 23, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*CrossFit*) to be located on second story of an existing 16-story building. C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 44 West 28<sup>th</sup> Street, between Broadway and Avenue of the Americas, Block 829, Lot 68, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 4, 2012, acting on Department of Buildings Application No. 121110902, reads in pertinent part:

The existing Physical Cultural establishment as defined by ZR 12-10, proposed at the second floor under Alteration Type 1 application is not permitted as-of-right in C6-4X and M1-6 zoning districts is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C6-4X zoning district and partially within an M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the second floor of a 16-story commercial building, contrary to ZR §§ 32-10 and 42-10; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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# MINUTES

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WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located on the south side of West 28<sup>th</sup> Street, between Broadway and Sixth Avenue, partially within a C6-4X zoning district and partially within an M1-6 zoning district; and

WHEREAS, the site has 99 feet of frontage on West 28<sup>th</sup> Street, a depth of 98'-9", and a total lot area of 9,776 sq. ft.; and

WHEREAS, the site is occupied by a 16-story commercial building; and

WHEREAS, the proposed PCE will occupy 8,000 sq. ft. of floor area located on the second floor of the building, with an exclusive PCE entrance on the ground floor leading to the elevator and stairway; and

WHEREAS, the PCE will be operated as CrossFit NYC; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the Board notes that the PCE has been in operation since April 2012 without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant will be reduced for the period of time between April 1, 2012 and the date of this grant; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA007M, dated July 9, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C6-4X zoning district and partially within an M1-6 zoning district, the legalization of a PCE on the second floor of a 16-story commercial building, contrary to ZR §§ 32-10 and 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2012- Four (4) sheets, and *on further condition*:

THAT the term of this grant will expire on April 1, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

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# MINUTES

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Adopted by the Board of Standards and Appeals,  
December 4, 2012.

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**237-12-BZ**

**CEQR #13-BSA-011M**

APPLICANT – Wachtel Masyr & Missry LLP, for Red Circle New York Corp., owner; Crunch LLP, lessee.

SUBJECT – Application August 1, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch*). C6-4A zoning district.

PREMISES AFFECTED – 220 West 19<sup>th</sup> Street between 7<sup>th</sup> and 8<sup>th</sup> Avenues, Block 768, Lot 50, Borough of Manhattan.

**COMMUNITY BOARD #4M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....5

.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 17, 2012, acting on Department of Buildings Application No. 121073426, reads in pertinent part:

The proposed physical culture establishment in zoning district C6-2A is not a permitted use as of right. A special permit is required from the Board of Standards and Appeals as per Sections 32-31 and 73-36 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (PCE) at the cellar, first, and second floors of a 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of West 19<sup>th</sup> Street, between Seventh Avenue and Eighth Avenue, within a C6-2A zoning district; and

WHEREAS, the site has 91.67 feet of frontage along West 19<sup>th</sup> Street, a depth of 92 feet, and a total lot area of 8,379 sq. ft.; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the proposed PCE will occupy 12,003 sq. ft. of floor area located on the first floor and second floor of the building, with an additional 3,437 sq. ft. of floor space located at the cellar level; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the applicant states that the hours of operation for the proposed PCE will be: Monday through Thursday, from 5:00 a.m. to 11:00 p.m.; Friday, from 5:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA011M, dated July 24, 2012; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and

# MINUTES

makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-2A zoning district, the operation of a physical culture establishment (PCE) at the cellar, first, and second floors of a 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 30, 2012" – Five (5) sheets, and *on further condition*:

THAT the term of this grant will expire on December 4, 2022;

THAT there will 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 must be performed by New York State licensed massage therapists;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT substantial construction will be completed in accordance with ZR §73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 4, 2012.

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## 75-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

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## 115-12-BZ

APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.

SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.

PREMISES AFFECTED – 701/745 64<sup>th</sup> Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for continued hearing.

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## 150-12-BZ

APPLICANT – Goldman Harris LLC, for Roseland/Stempel 21st Street, owner; TriCera Revolution, Inc., lessee.

SUBJECT – Application May 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Flywheel Sports*). C6-4A zoning district.

PREMISES AFFECTED – 39 West 21<sup>st</sup> Street, north side of West 21<sup>st</sup> Street, between 5<sup>th</sup> and 6<sup>th</sup> Avenues. Block 823, Lot 17. Borough of Manhattan.

### COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2013, at 1:30 P.M., for decision, hearing closed.

-----

## 200-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.

SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of UG4 house of worship (*The Chinese Overseas Mission*), contrary floor area (§109-121), lot coverage (§109-122) and enlargement of non-complying building (§54-31). C6-2 zoning district.

PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

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## 244-12-BZ

APPLICANT – Watchel, Masyr & Missry LLP by Ellen Hay for EQR-600 Washington LLC, owner; Gotham Gym 1 LLC, lessee.

SUBJECT – Application August 8, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Gotham Gym*). M1-5 zoning district.

Special Permit (§73-36) to permit a physical culture PREMISES AFFECTED – 600 Washington Street, west side of Washington Street between Morton and Leroy Streets, Block 602, Lot 10, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.  
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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.  
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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## 249-12-BZ

APPLICANT – Lewis E. Garfinkel, for Solomon Friedman, owner.

SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a); side yards (§23-461(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1320 East 27<sup>th</sup> Street, west side of East 27<sup>th</sup> Street, 140' south of Avenue M, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.  
-----

## 258-12-BZ

APPLICANT – Holland & Knight, LLP, for Old Firehouse No. 4 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the conversion of two buildings into a single-family residence, contrary to lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district.

PREMISES AFFECTED – 113 East 90<sup>th</sup> Street, north side of East 90<sup>th</sup> Street, 150' west of the intersection of 90<sup>th</sup> Street, and Park Avenue, Block 1519, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,



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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 97, No. 51

December 19, 2012

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### DIRECTORY

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314-08-BZ	437-447 West 13rd Street, Manhattan
107-06-BZ	140 East 63 <sup>rd</sup> Street, Manhattan
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# DOCKETS

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New Case Filed Up to December 11, 2012  
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**320-12-BZ**

23 West 116th Street, north side of W. 116th Street, 450' east of intersection of Lenox Avenue and W. 116th Street., Block 1600, Lot(s) 20, Borough of **Manhattan, Community Board: 10.** special permit (73-36) to allow physical culture establishment. C4-5X district.  
-----

**321-12-BZ**

22 Girard Street, west side of Girard Street, 149.63' south of Shore Boulevard., Block 8745, Lot(s) 70, Borough of **Brooklyn, Community Board: 15.** Special permit (73-36) to allow an enlargement of a single family residence. R3-1 district.  
-----

**322-12-BZ**

701 Avenue P, northeast corner of East 7th Street and Avenue P., Block 6614, Lot(s) 60, Borough of **Brooklyn, Community Board: 12.** Variance (72-21) to allow the enlargement of a single family residence. R5 district.  
-----

**323-12-BZ**

25 Broadway, southwest corner of the intersection formed by Broadway and Morris Street., Block 13, Lot(s) 27, Borough of **Manhattan, Community Board: 1.** Special permit (73-36) to allow the operation of a physical culture establishment. C5-5;LM district.  
-----

**324-12-BZ**

45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot(s) 69, Borough of **Brooklyn, Community Board: 10.** Special permit (73-622) to allow an enlargement of the existing single-family home R3-1 district.  
-----

**325-12-BZ**

1273-1285 York Avenue, West side of York Avenue bounded by East 68th and 69th Streets., Block 1463, Lot(s) 21, 31, Borough of **Manhattan, Community Board: 8.** Variance (72-21) of height and setback, lot coverage, rear yard, floor area and parking to facilitate development of a Use Group 4 maternity hospital and ambulatory diagnostic or treatment health care facilities. R10/R8/R9 district.  
-----

**326-12-A**

52 Canal Street, Canal Street and Orchard Street, Block 294, Lot(s) 22, Borough of **Manhattan, Community Board: 3.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings. C6-2 district.  
-----

**327-12-A**

1560 2nd Avenue, 2nd Avenue and 81st Street, Block 1543, Lot(s) 49, Borough of **Manhattan, Community Board: 8.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.  
-----

**328-12-A**

2061 2nd Avenue, 2nd Avenue and 106th Street, Block 1655, Lot(s) 28, Borough of **Manhattan, Community Board: 11.** Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.  
-----

**329-12-A**

2240 1st Avenue, 1st Avenue and 115th Street, Block 1709, Lot(s) 1, Borough of **Manhattan, Community Board: 11.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.  
-----

**330-12-A**

160 East 25th Street, 3rd Avenue and 25th Street, Block 880, Lot(s) 50, Borough of **Manhattan, Community Board: 6.** Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.  
-----

**331-12-A**

289 Hudson Street, Hudson Street and Spring Street., Block 594, Lot(s) 79, Borough of **Manhattan, Community Board: 9.** Appeal of Permit Revocations dated November 14, 2012, by the Department of Buildings.  
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**332-12-A**

127 Ludlow Street, Ludlow Street and Rivington Street, Block 410, Lot(s) 17, Borough of **Manhattan, Community Board: 3.** Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.  
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# DOCKETS

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**333-12-A**

1786 3rd Avenue, 3rd Avenue and 99th Street, Block 1627, Lot(s) 33, Borough of **Manhattan, Community Board: 11**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

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**334-12-A**

17 Avenue B, Avenue B and 2nd Street, Block 385, Lot(s) 1, Borough of **Manhattan, Community Board: 3**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

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**335-12-A**

173 Bowery, Bowery and Delancey Streets., Block 424, Lot(s) 12, Borough of **Manhattan, Community Board: 3**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

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**336-12-A**

240 Sullivan Street, Sullivan Street and West 3rd Street, Block 540, Lot(s) 23, Borough of **Manhattan, Community Board: 2**. Appeal of Permit Revocations dated November 14, 2012 by Department of Buildings.

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**337-12-A**

361 1st Avenue, 1st Avenue and 21st Street, Block 927, Lot(s) 25, Borough of **Manhattan, Community Board: 3**. Appeal of Permit Revocations dated November 14, 2012 by the Department of Buildings.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**JANUARY 15, 2013, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 15, 2013, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **551-37-BZ**

APPLICANT – Eric Palatnik, P.C., for Manocher M. Mehrfar, owner.

SUBJECT – Application October 12, 2012 – Extension of Term (§11-411) of a previously granted Variance for the continued operation of an automobile repair shop (Red's Auto Repair) which expired on July 15, 2012; Waiver of the Ruled. R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, between 234<sup>th</sup> and 233<sup>rd</sup> Street, Block 8166, Lot 20, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### **18-02-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 8610 Flatlands Realty, LLC, owner.

SUBJECT – Application August 17, 2012 – Extension of Term (§11-411) of a previously granted Variance for the continued operation of an automotive laundry (UG 16B) which expired on August 13, 2012. C2-3/R5D zoning district.

PREMISES AFFECTED – 8610 Flatlands Avenue, southwest corner of intersection of Flatlands Avenue and 87<sup>th</sup> Street, Block 8023, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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## **APPEALS CALENDAR**

### **208-12-A**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 647-649 Washington Avenue, LLC, owner.

SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 17 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lot 123, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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### **216-12-A thru 232-12-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 647-649 Washington Avenue, LLC, owner.

SUBJECT – Application July 2, 2012 – Proposed construction of eighteen (18) single family homes that do not front on a legally mapped street, contrary to General City Law Section 36. R3A Zoning District.

PREMISES AFFECTED – 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47 and 49 McGee Lane, north side of McGee Lane, east of Harbor Road and West of Union Avenue, Block 01226, Lots 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107 and 106, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**JANUARY 15, 2013, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 15, 2013, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **242-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship, contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 1621-1629 61<sup>st</sup> Street, northeast side of 61<sup>st</sup> Street, 170' southeast from the intersection of 16<sup>th</sup> Avenue and 61<sup>st</sup> Street, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### **257-12-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Birta Hanono and Elie Hanono, owners.

SUBJECT – Application August 29, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); side yard (§23-461) and less than the required rear yard (ZR §23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 2359 East 5<sup>th</sup> Street, east side of East 5<sup>th</sup> Street between Avenue W and Angela Drive, Block 7181, Lot 44, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**285-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.

SUBJECT – Application October 3, 2012 – Application filed pursuant to Z.R.§73-36, seeking a special permit to allow the operation of a physical culture establishment (*Narita Bodyworks*) on the 4th floor of the existing building at the premises. M1-6 zoning district.

PREMISES AFFECTED – 54 West 39<sup>th</sup> Street, south side of West 39<sup>th</sup> Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**291-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP for 301-303 West 125, LLC, owner; Blink 125<sup>th</sup> Street Inc., lessee.

SUBJECT – Application October 9, 2012 – Application for special permit to allow physical culture establishment (*Blink*) within proposed commercial building.

PREMISES AFFECTED – 301 West 125<sup>th</sup> Street, northwest corner of intersection of West 125<sup>th</sup> Street and Frederick Douglas Boulevard, Block 1952, Lot 29, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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*Jeff Mulligan, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, DECEMBER 11, 2012 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

### SPECIAL ORDER CALENDAR

#### 1005-66-BZ

APPLICANT – Moshe M. Friedman, P.E. for Chelsea Town LLC c/o Hoffman Management, owner.

SUBJECT – Application September 4, 2012 – Extension of Term of a previously granted variance pursuant to Section 60(1b) of the Multiple Dwelling Law which permitted 22 transient parking spaces which expired on May 2, 2012; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 320 West 30<sup>th</sup> Street, south side of West 30<sup>th</sup> Street, 202' west of 8<sup>th</sup> Avenue. Block 753, Lot 51, Borough of Manhattan.

#### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this application is a request for a re-opening and an extension of term for a previously granted variance to allow transient parking in an accessory garage, which expired on May 2, 2012; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in *The City Record*, and then to decision on December 11, 2012; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject site is located on the south side of West 30<sup>th</sup> Street, between Eighth Avenue and Ninth Avenue, within an R8B zoning district; and

WHEREAS, the site is occupied by a six-story residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a 45-space accessory garage, with 19 spaces in the cellar and 26 spaces in the sub-cellar; and

WHEREAS, on May 2, 1967, the Board granted an application pursuant to Section 60(1)(b) of the Multiple Dwelling Law (“MDL”), to permit a maximum of 22 surplus parking spaces to be used for transient parking, for a term of

15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on January 31, 2006, the Board granted a ten-year extension of term, which expired on May 12, 2012; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens* and *amends* the resolution pursuant to Section 60(1)(b) of the MDL, said resolution having been adopted on May 2, 1967, as subsequently extended, so that as amended this portion of the resolution shall read: “granted for a term of ten (10) years from May 2, 2012, to expire on May 2, 2022; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received September 4, 2012’ – (4) sheets; and *on further condition*;

THAT this term will expire on May 2, 2022;

THAT the number of daily transient parking spaces will be no greater than 22;

THAT all residential leases will indicate that the 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 placed in a conspicuous place within the garage;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the layout of the parking garage shall be as approved by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 104088345)

Adopted by the Board of Standards and Appeals, December 11, 2012.

#### 299-82-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, Esq., for 10 Stanton Owners LLC, Chrystie Land Assoc. LLC c/o Sukenik, Segal & Graff, P.C.

SUBJECT – Application May 4, 2012 – Amendment to a previously granted variance (§72-21) which allowed a residential building. Proposed amendment would permit a

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new mixed use hotel and residential building on the subject zoning lot. C6-1 zoning district.

PREMISES AFFECTED – 207-217 Chrystie Street, northwest corner of Chrystie Street and Stan Street, Block 427, Lot 2, 200, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow a modification to the site plan to reflect a second building; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in The City Record, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, a representative of the Tenant Association of 10 Stanton Street provided testimony in support of the application, noting specifically the proposed improvements to open space and the inclusion of new communal open space on the roof of the existing building at the site; and

WHEREAS, certain neighbors, including Sperone Westwater (the “Gallery”), the Lower East Side Preservation Initiative, the New Museum, the Bowery-Stanton Block Association, and the Bowery Alliance of Neighbors provided testimony in opposition to the application (the “Opposition”); and

WHEREAS, the Opposition’s primary assertions are (1) there will be significant environmental impacts if the Board approves the application such that the project is subject to environmental review per the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review (CEQR) regulations, and (2) the scale of the proposed building is incompatible with the surrounding area; and

WHEREAS, the Opposition raises concerns about the potential adverse impacts associated with: (1) the elimination of open space, which it contends was important to the Board’s consideration of the original variance; (2) impaired views from the Sara Delano Roosevelt Park and shadows across it and the Liz Christy/Bowery-Houston Community Garden; (3) the incompatibility of the height with surrounding lowrise buildings; and (4) the blocked and impaired views of adjacent buildings, including the Gallery; and

WHEREAS, the subject zoning lot consists of Tax Lots 2 and 200, with frontage on Stanton Street, Chrystie Street, and the Bowery, and has a lot area of approximately 57,135

sq. ft.; and

WHEREAS, the site is located within a C6-1 zoning district; and

WHEREAS, the Lot 2 portion of the site is occupied by a nine-story multiple dwelling building, with a height of 84’-6”, floor area of 146,484 sq. ft., and an FAR of 2.56 (the “Existing Building”); and

WHEREAS, the applicant proposes to build a 25-story mixed-use hotel/residential building containing hotel use on floors 1-18 and residential apartments on floors 19-25 with 195,560 sq. ft. of total floor area, and a height of 274 feet (289 feet including bulkhead) on the Tax Lot 200 portion of the site (the “New Building”); and

WHEREAS, together, the Existing Building and the New Building will have 179,894 sq. ft. (3.15 FAR) of residential floor area and 162,150 sq. ft. (2.84 FAR) of hotel floor area for a total of 342,044 sq. ft. (5.99 FAR) across the site; and

WHEREAS, the applicant states that a maximum residential FAR of 3.42 and a maximum commercial FAR of 6.0 is permitted on the site; and

WHEREAS, the applicant states that the New Building complies with all zoning requirements and that no variance of any zoning provision is required; and

WHEREAS, accordingly, the applicant states that the purpose for the amendment is to substitute the new site plan, reflecting the New Building, for the site plan approved by the prior approval; and

WHEREAS, on June 11, 1982, under the subject calendar number, the Board granted a variance of the applicable height and setback regulations of a portion of the then-proposed Existing Building to allow for a “minor intrusion into the sky exposure plane” of portions of the upper stories (the “1982 Approval”); and

WHEREAS, as additional background, the applicant provides that in January 1970, acting through the Department of Housing Preservation and Development (HPD), the City of New York established the Cooper Square Urban Renewal Plan (URP) for a five-block area between the Bowery and Second Avenue/Chrystie Street from East 5<sup>th</sup> Street to Stanton Street (the Cooper Square Urban Renewal Area); and

WHEREAS, on November 16, 1982, the City Planning Commission approved two Uniform Land Use Review Procedure (ULURP) applications related to the zoning lot including the land disposition of the zoning lot to a developer; and

WHEREAS, the private developer and HDC entered into a housing assistance payment contract with HUD and agreed to maintain the Existing Building as Section 8 housing for a term of 20 years; and

WHEREAS, at the time of the 1982 Approval, the zoning lot comprised Tax Lots 1, 47-51 and parts of Tax Lots 4 and 27; it was subsequently merged into Tax Lot 1 prior to development of the Existing Building; in 2009, Tax Lot 1 was subdivided into Tax lots 2 and 200; and

WHEREAS, the Existing Building was constructed on the Tax Lot 2 portion of the zoning lot and the remainder of



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the zoning lot was occupied by an accessory residential parking lot for 20 cars and landscaped open space; and

WHEREAS, the applicant states that on February 13, 2010, the Cooper Square URP expired and the obligation to maintain the Existing Building as Section 8 housing will expire on June 25, 2015; and

WHEREAS, the applicant states that by agreement with the Tenant Association of 10 Stanton Street, the applicant will continue to apply for federal housing subsidies for the Existing Building through 2035; and

WHEREAS, the applicant notes that a subway tunnel for the B and D lines runs beneath the portion of the site closest to Chrystie Street, so to avoid construction above or near the subway tunnel, the street wall of the New Building will be located approximately 66 feet from Chrystie Street; and

WHEREAS, the applicant asserts that the height of 274 feet (289 feet to the top of the mechanical bulkhead) fits well within the Chrystie Street and Stanton Street sky exposure planes and it therefore complies with C6-1 zoning with respect to height and setback (unlike the Existing Building); and

WHEREAS, the applicant proposes 34,480 sq. ft. of open space, which is slightly more than the open space required by the underlying zoning; and

WHEREAS, further, the applicant notes that it does not request any increase or change to the variance of the height and setback regulations granted for the Existing Building; and

WHEREAS, in support of its position that none of the ZR § 72-21 findings of the original variance are implicated, the applicant states that the subway tunnel restricted the placement of the Existing Building and that subway tunnel still exists and affects the development of the site, so the (a) finding is not implicated; and

WHEREAS, as to the (b) finding, the applicant cites to the Board's prior decision in BSA Cal. No. 885-78-BZ (120 West 25<sup>th</sup> Street) in which it approved a proposal for a site subject to a variance to transfer unused development rights to an adjacent site, based on facts including that 30 years had passed since the initial approval and that at the time of the earlier grant there was not any demand for and therefore no value to the excess development rights; and

WHEREAS, the applicant notes that in 1982, the surrounding area was economically depressed with no new development or economic investment in many years prior to the adoption of the Cooper Square URP in 1970; in fact, the URP was necessitated by the fact that the real estate in the area had no value sufficient to induce private investment and development; and

WHEREAS, the applicant asserts that as in 120 West 25<sup>th</sup> Street, "there was no demand for and therefore no value to the development rights appurtenant to any of the properties in the area;" and

WHEREAS, the applicant asserts that the grant of the height and setback waivers for the Existing Building put the site's owner on an equal footing with the owners of other

properties in the surrounding area which do not have a subway tunnel running beneath them, creating practical difficulty and unnecessary hardship in constructing a concrete plank and bearing wall building; and

WHEREAS, the applicant asserts that the provision of height/setback waivers did not require that excess development rights, which had no value at the time, be stripped away while all the other properties in the area who similarly had valueless development rights in 1982 were able to retain their full development rights; and

WHEREAS, accordingly, the applicant asserts that because (1) 30 years have elapsed since the original variance grant and (2) the surrounding area was so economically depressed in 1982 that the unused development rights had no value and were unlikely to have been contemplated by the Board in granting the variance, development of the New Building using the unused development rights will not implicate or affect the basis of the Board's conclusion on the (b) finding; and

WHEREAS, the applicant asserts that, although the Board did not specifically address the compatibility of the proposed Existing Building with the surrounding area, it concluded that the height and setback would not alter the essential character of the neighborhood or impair the use or development of adjacent property by virtue of making all of the findings; and

WHEREAS, in support of the assertion that the area has changed a lot since the 1982 Approval, the applicant lists a number of developments in the area that have been constructed since 1982, including (1) a 14-story (130 feet) mixed-use building constructed in 2003 on a former Cooper Square URP site, which contains food store and 360 apartments, adjacent to the north of the site; (2) one block to the north, on another former Cooper Square Site, a nine-story (approximately 90 feet) mixed-use building with commercial use and 206 apartments constructed in 2005 and a seven-story mixed-use building with 90 apartments constructed in 2007; (3) a 12-story (126 feet) building with 212 dormitory units for New York University at 1 East 2<sup>nd</sup> Street; (4) two 12-story (100 feet and 120 feet) and one ten-story (128 feet) mixed-use commercial residential buildings on East Houston Street within three blocks of the site; and (5) two blocks south of the site, a 16-story (160 feet) mixed-use building built in 2005; and

WHEREAS, the applicant provided the following information on hotels and buildings with heights in the 200-ft. range in the area: (1) the Bowery Hotel at 16 stories (190 feet) built in 2003; (2) the Standard Hotel with 21 stories (224 feet) built in 2006; (3) the Thompson LES Hotel at 20 stories (208 feet); (4) the Hotel on Rivington with 20 stories (194 feet); (5) 353 Bowery (24 stories (210 feet)); (6) 66 First Avenue (towers of 21 stories (197 feet) and 21 stories (195 feet)); (7) 40 First Avenue (21 stories (193 feet)); (8) 207 East Houston (23 stories (276 feet)); (9) 101 Ludlow (17 stories (230 feet)); and (9) 62 Essex Street (23 stories (229 feet)); and

WHEREAS, the applicant asserts that the

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neighborhood is now mixed-use with many new buildings of ten and 12 stories and some of 20 stories or more, in contrast to the area in 1982 when the neighborhood was characterized by four- to six-story older buildings; and

WHEREAS, as to the (d) finding, the applicant states that the practical difficulties and unnecessary hardship which led to the request for the variance still exist as do the HUD and Section 8 financing and building height requirements associated with the subsidized Existing Building, respectively; and

WHEREAS, the applicant asserts that none of the physical conditions or City policies were created by the owner or any predecessor in interest; and

WHEREAS, as to the (e) finding, the applicant notes that the 1982 Approval characterized the zoning waivers as allowing a “minor intrusion in the sky exposure plane” and the New Building does not require any new zoning relief; and

WHEREAS, the applicant cites to BSA Cal. No. 1149-62-BZ (Saint Francis Xavier/Clothing Workers Center) to support its position that an amendment to a prior variance like the proposed is appropriate when “the waivers and conditions of the underlying grant are not implicated” and “the configuration of the other buildings on the zoning lot will remain the same;” and

WHEREAS, the applicant enumerates the similarities with the Saint Francis Xavier case as follows (1) several decades have passed since the original variance grant; (2) the surrounding area was so economically depressed in 1982 that the unused development rights had no value and were unlikely to have been contemplated by the Board in granting the original variance; (3) no new variances and no changes to the original variance are required; and (4) except for the addition of the rooftop open space, the configuration of the Existing Building will remain the same; and

WHEREAS, the applicant asserts that it is not disturbing the prior approval by constructing the New Building in the open space because there is not any record that the Board intended to require the applicant to maintain the open space as a condition of the variance; in contrast, the applicant asserts that there was discussion about the parking spaces and the Board required that the applicant provide all of the required spaces, which it has and which will be maintained; and

WHEREAS, as to the open space, the applicant notes that the site currently has a total of 40,388 sq. ft. of open space, of which 7,677 sq. ft. is paved and used for the residential parking lot and driveway and 32,711 sq. ft. is unpaved and includes sidewalks, walking paths, play areas and lawn; and

WHEREAS, the applicant proposes 28,141 sq. ft. of open space at grade, of which 10,057 sq. ft. will be paved and used for the residential parking lot and driveway as well as the proposed hotel drop-off, and 18,084 sq. ft. would be landscaped; the remaining 6,339 sq. ft. of open space will be provided on several rooftops of the New Building; and

WHEREAS, the applicant states that the open spaces

at the front of the Existing Building along Stanton Street and the corners of Bowery and Chrystie Street will not be reduced; and

WHEREAS, additionally, the applicant proposes to redevelop the roof of the Existing Building as residential open area and part of the program to upgrade and improve the Existing Building; and

WHEREAS, the applicant notes that the proposed rooftop open space cannot be counted towards the open space requirement of ZR § 23-142 because it is above a portion of the building that contains dwelling units, but it will nonetheless provide approximately 9,150 sq. ft. of open area for the residents of the Existing Building; and

WHEREAS, the applicant asserts that including the rooftop area, there will be 5,466 fewer sq. ft. of open space than currently, however the new open space will be significantly improved over the existing conditions; and

WHEREAS, the applicant also notes that the site is across the street from the nearly eight-acre Sara Delano Roosevelt Park which provides access to more open space; and

WHEREAS, based on review of the record, the Board concludes that the Existing Building neither requires new waivers to zoning, nor affects the original waivers (across the site), nor affects the required findings made at the time of the original grant; and

WHEREAS, the Opposition asserts that whenever an agency takes a discretionary action, it must consider the environmental impacts of that action and that the only exceptions to such review are those where the action is minimal in its impacts; and

WHEREAS, the Opposition asserts that the modification of the 1982 Approval to allow construction on the zoning lot governed by the Board is a discretionary act of the Board and there is no basis for determining that this is a Type II action subject to exemption, but rather, given its size and scope, it should be classified as a Type I action subject to environmental review; and

WHEREAS, the Opposition also states that the modification does not substantially comply with the Board’s previous approval and the findings under which the approval was made are negatively affected by such amendments; and

WHEREAS, the Opposition cites to several New York State cases which discuss the appropriateness of a Type II finding including Zutt v. State of New York, 949 N.Y.S.2d 402 (2d Dept. 2012); Town of Goshen v. Serdarevic, 793 N.Y.S. 485 (2005); and Williamsburg Around the Bridge Block Association v. Giuliani, 644 N.Y.S.2d 252 (1996); and

WHEREAS, the Opposition states that it is irrelevant that the project is as-of-right after the Board’s approval since the Board’s approval is required before commencing the so-called as-of-right construction; and

WHEREAS, in response to the Opposition’s concerns, the applicant states that (1) the Board has the discretion, per its Rules of Practice and Procedure § 1-07.1(a)(1) to determine which amendments to variances granted under ZR § 72-21 may be filed on the SOC calendar and may allow

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applications to be heard there unless it determines that “the scope of the application is major,” in which case, the Board “may request that a new application be filed on the BZ [zoning] calendar;” and

WHEREAS, in support of its assertion that the Board was within its authority to hear the application on the SOC calendar and not require an environmental review, the applicant cites to Fisher v. Board of Standards and Appeals, 71 A.D.3d 487 (1<sup>st</sup> Dept. 2010) and 873 N.Y.S.2d 511 (Sup. Ct. 2008) which is the case that arose from the Board’s decision for Saint Francis Xavier/Clothing Workers Center; and

WHEREAS, the applicant notes that the matter in Fisher was an application for the enlargement of the zoning lot of a site subject to a Board variance; the court noted that “the configuration of the other buildings on the zoning lot will remain the same” and that the application which “did not seek a new zoning variance or a relaxation of the Zoning Resolution requirements” and, thus the approval constituted “a technical amendment to the originally approved site plan” See also East 91<sup>st</sup> Neighbors to Preserve Landmarks v. New York City Board of Standards and Appeals, 294 A.D.2d 126 (1<sup>st</sup> Dept 2002); and

WHEREAS, the applicant notes that the Board’s instructions for SOC applications do not include the requirement for a CEQR application; and

WHEREAS, the applicant also cites to Incorporated Village of Atlantic Beach v. Gavalas, 81 N.Y.2d 322, 326 (1993), in which the Court of Appeals analyzed the question of whether an action is discretionary or ministerial as follows:

The pivotal inquiry in such matter is whether the information that would be considered in an environmental review may form the basis for a decision whether or not to undertake or approve the action under consideration. If an agency has some discretion, but that discretion is circumscribed by a narrow set of criteria that do not bear any relationship to the environmental concerns that may be raised in an environmental review, the agency’s decisions will not be considered ‘actions’ for purposes of SEQRA and CEQR; and

WHEREAS, the applicant asserts that as in Atlantic Beach, the preparation of an environmental assessment would be a “meaningless and futile act” because the Board could not properly deny the requested minor amendment “on the basis of SEQRA’s broader environmental concerns;” and

WHEREAS, the applicant asserts that the limited question before the Board is whether the findings made in granting the 1982 Approval are implicated or affected by the requested minor amendment and is completely unrelated to, and could not be informed by the information provided by an environmental assessment; and

WHEREAS, the applicant responds to the Opposition’s assertion that an item may only be included on an agency’s supplemental list of Type II actions if such action does not have a significant adverse environmental impact based on the criteria in SEQRA 617.7(c), stating that minor amendments to

previously granted variances are not exempt because they are a *supplemental* Type II action but because they are exempt as *per se* Type II actions under 617.7(c)(19) as “official acts of a ministerial nature involving no exercise of discretion;” and

WHEREAS, the applicant refutes the Opposition’s assertion that the action is a Type I action because it is an Unlisted action which exceeds certain Type I thresholds and meets certain other criteria, because it asserts that a minor amendment of a previously granted variance is not an Unlisted action; and

WHEREAS, as to the concerns about the effect of the New Building on the Gallery and the adjacent park and gardens, the applicant asserts that (1) the New Building was not included in the area downzonings and thus is not subject to the conditions of the downzoning, (2) a building even reduced to half the size of the New Building would have the same effect on the Gallery as the proposal, (3) the Gallery does not have a protected right to light and air beyond what the Zoning Resolution and other relevant statutes require, and (4) the New Building is not subject to environmental review and does not require a shadow study, but even so, there is already a shadow across the garden from the 229 Chrystie Street building; and

WHEREAS, the applicant notes that it reduced the height of the proposal from 330 feet, which was similarly permitted by the underlying zoning district regulations to 274 feet, which results in a height that is substantially lower than what is permitted as-of-right in the C6-1 zoning district; and

WHEREAS, the applicant states that development in full compliance with all applicable zoning requirements is presumed to be compatible with the neighborhood character and to have no significant adverse impacts on the environment and that is why such buildings do not require analysis under CEQR See Matter of Neville v. Koch, 79 N.Y.2d 416 (1992); the court in Neville stated that “so long as the proposed use is one of the ‘Uses Permitted As of Right’ in the City’s Zoning Resolution, a developer who also satisfies the Building Code can simply file its architectural plans with the Department of Buildings and begin construction upon issuance of a building permit;” and

WHEREAS, the Board concludes that the application for the New Building was appropriately classified as a minor amendment and heard on the SOC calendar and that the question before it is limited to whether the amendment disturbs the findings and conditions of the original variance and that such approval is of a ministerial nature that does not require environmental review; and

WHEREAS, the Board agrees with the applicant that the question of whether the New Building is compatible with neighborhood character is limited to a determination of whether the (c) finding of the 1982 Approval would be disturbed; and

WHEREAS, the Board agrees that the New Building will cast a shadow, but that because the building is within the building envelope contemplated by zoning for the C6-1 zoning district, it is presumed to not have a significant adverse impact and is thus not subject to environmental review; and

WHEREAS, the Board notes that the original (c) finding

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# MINUTES

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analysis was reserved to whether the Existing Building and its encroachment into the sky exposure plane was compatible with the character of the neighborhood; the Board notes that the single non-complying height/setback is not related to, and thus is not affected by the construction of the New Building; and

WHEREAS, the Board agrees with the applicant that there is not any evidence that the open space on the Board-approved site plan was a condition of the initial approval or that a redesign of that space would be in conflict with the prior approval; and

WHEREAS, the Board does not find that the existing open space was a required condition for the height/setback waivers associated with the Existing Building; and

WHEREAS, further, the Board notes that the applicant proposes to provide open space in compliance with zoning district requirements; and

WHEREAS, the Board notes that in the context of an amendment to a variance, the trigger for environmental review is not the height of the building but whether the effect on the variance is major or minor; any new non-compliance with zoning would be considered major as that would require new discretionary relief, but a modification within the scope of the original grant would not; and

WHEREAS, the Board finds that an action such as the proposed that does not have any effect on, and is neutral to, zoning compliance is not considered major as opposed to a proposal which increases the degree of non-compliance or introduces new non-compliance; and

WHEREAS, the Board notes that there is no assertion that the New Building requires any zoning waivers or in any way impacts the intrusion into the sky exposure plane of the upper stories of the Existing Building; and

WHEREAS, the Board notes that in Fisher, the Appellate Division upheld the Board's determination that an amendment that did not include a new variance or undermine the prior findings was technical in nature and not subject to environmental review; and

WHEREAS, the Board finds notes that the Appellate Division found that environmental review was not required because (1) the modification did not change any condition of the original approval and (2) no new non-compliance was created; and

WHEREAS, the Board notes that the court referred to a zoning lot merger (and a proposal for a 20-story hotel building on the new merged lot) involving a variance site under the Board's jurisdiction as being an as-of-right amendment; and

WHEREAS, the Board finds the facts in Fisher to be similar to the subject case; and

WHEREAS, however, the Board notes that it may exercise its discretion and ask for environmental review of amendments to prior approvals if the basis of the analysis has changed in a way that would affect CEQR categories; and

WHEREAS, lastly, the Board notes that it does not find that the height/setback variance associated with the 1982 Approval extinguished all other rights on the zoning lot; and

WHEREAS, based upon its review of the record, the

Board finds that the proposed modification of the site plan is appropriate.

*Therefore it is Resolved that* the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on June 11, 1982, so that as amended this portion of the resolution shall read: "to permit the construction of the New Building on the site and to permit modifications to the BSA-approved site plan on condition that all site conditions will comply with drawings marked 'Received December 4, 2012'– (29) sheets; and on further condition:

THAT the New Building will conform to the BSA-approved plans;

THAT any changes to the bulk of the New Building are subject to review and approval;

THAT all conditions from the prior resolution not specifically waived by the Board will remain in effect;

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 plan(s) and/or configuration(s) not related to the relief granted."  
(DOB Application No. 121011396)

Adopted by the Board of Standards and Appeals,  
December 11, 2012.

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## 95-90-BZ

APPLICANT – Akerman Senterfitt, LLP, for Bell Realty, owner; CVS Pharmacy, lessee.

SUBJECT – Application July 26, 2012 – Extension of Term of an approved variance (§72-21) which permitted retail (UG 6) with accessory parking for 28 vehicles which expired on January 28, 2012. R1-2 zoning district.

PREMISES AFFECTED – 242-24 Northern Boulevard, bounded by Northern Boulevard north of Douglaston Parkway, west and 243<sup>rd</sup> Street to the east, Block 8179, Lot 1, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of the term for a previously granted variance for the construction of a commercial building in a residential district, which expired on January 28, 2012; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with continued hearings on October 30, 2012 and November 15, 2012 and then to decision on December 11, 2012; and

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WHEREAS, Community Board 11, Queens, recommends approval of this application provided the applicant comply with the previous conditions of the grant and in addition that store managers be trained in the requirements of the variance, and that in inclement weather chains be used to close the entryway if the gates are frozen; and

WHEREAS, the subject site is located on a corner through lot bounded by Douglaston Parkway to the west, Northern Boulevard to the north, and 243<sup>rd</sup> Street to the east, within an R1-2 zoning district; and

WHEREAS, on January 28, 1992, under the subject calendar number, the Board granted a variance to permit the construction of a three-story commercial building for a term of 20 years, which expired on January 28, 2012; and

WHEREAS, subsequently, the grant has been amended on various occasions; and

WHEREAS, most recently, on May 6, 2003, the Board held a compliance hearing based on complaints received about the operation of the site, in which the Board found adequate documentation had been submitted to demonstrate compliance with the variance; and

WHEREAS, the applicant now seeks an additional 20-year extension of the term; and

WHEREAS, at hearing, the Board questioned whether the site has been in compliance with the conditions of the previous grants; and

WHEREAS, in response, the applicant submitted a compliance chart, photographs, and an affidavit from the store manager reflecting that the site operates in accordance with the conditions of the previous resolutions, and that the “no left turn” sign at the curb cut of Northern Boulevard, which was damaged during Hurricane Sandy, will be re-installed; and

WHEREAS, as to the Community Board’s requests, the affidavit submitted by the applicant states that store managers have been familiarized with the conditions of the variance, and that in inclement weather chains will be used to close the entryway if the gates are frozen; and

WHEREAS, based upon the above, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 28, 1992, so that as amended this portion of the resolution shall read: “to extend the term for 20 years from the date of this grant, to expire on January 28, 2032; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of the grant will expire on January 28, 2032;

THAT street trees and landscaping will be maintained in accordance with the BSA-approved plans;

THAT the site will be maintained free of debris and graffiti;

THAT the HVAC unit will be located in the center of

the roof, in accordance with the BSA-approved plans;

THAT the parking lot will be locked after hours;

THAT a “no left turn” sign be posted at the curb cut of Northern Boulevard;

THAT signage will comply with the BSA-approved plans;

THAT the garbage enclosure will be covered and enclosed and located in accordance with the BSA-approved plans;

THAT the garbage will be stored within the enclosure and deliveries and garbage pickup will not take place before 7:00 a.m. or after 9:00 p.m.;

THAT if a dumpster is used it will have a rubber lid;

THAT the above conditions will appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals December 11, 2012.

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## **271-90-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for EPT Realty Corp., owner.

SUBJECT – Application October 11, 2011 – Extension of Term (§11-411) for the continued operation of a UG16 automotive repair shop with used car sales which expired on October 29, 2011. R7X/C2-3 zoning district.

PREMISES AFFECTED – 68-01/5 Queens Boulevard, northeast corner of intersection of Queens Boulevard and 68<sup>th</sup> Street, Block 1348, Lot 53, Borough of Queens.

## **COMMUNITY BOARD #2Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a prior grant for an automotive repair shop with used car sales, which expired on October 29, 2011, and an amendment to permit an increase in the number of used cars available for sale; and

WHEREAS, a public hearing was held on this application on March 6, 2012, after due notice by publication in *The City Record*, with continued hearings on April 24, 2012, June 5, 2012, July 10, 2012, August 7, 2012, September 11, 2012, October 16, 2012 and October 30, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had

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site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends approval of this application provided the applicant remove the flags and banners from the site and improve the landscaping on the site; and

WHEREAS, the subject site is an irregular corner lot located at the northeast corner of Queens Boulevard and 68<sup>th</sup> Street, located within a C2-3 (R7X) zoning district; and

WHEREAS, the site has 89.35 feet of frontage on Queens Boulevard, 57.7 feet of frontage on 68<sup>th</sup> Street, and a total lot area of 5,351 sq. ft.; and

WHEREAS, the site is occupied by a one-story automotive repair shop with used car sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 13, 1958, when, under BSA Cal. No. 632-57-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the term was extended and the grant amended by the Board at various times; and

WHEREAS, on October 29, 1991, under the subject calendar number, the Board granted the re-establishment of the expired variance and a change in use from gasoline service station with accessory uses (Use Group 16) to motor vehicle repair shop with used car sales limited to five cars (Use Group 16), pursuant to ZR §§ 11-411 and 11-413, for a term of ten years; and

WHEREAS, most recently, on September 24, 2002, the Board granted a ten-year extension of term, to expire on October 29, 2011; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, the applicant also requests an amendment to permit an increase in the number of used cars available for sale at the site from five to ten; and

WHEREAS, the applicant represents that since the prior approval the demand for used car sales has increased relative to the demand for automotive repairs; and

WHEREAS, at hearing, the Board raised concerns regarding the lack of maneuverability on the site if five additional spaces are devoted to used car sales; and

WHEREAS, in response, the applicant submitted revised plans reducing the number of parking spaces devoted to used car sales from ten to eight, which the applicant states will allow for greater maneuverability within the lot while still affording the owner and tenant the opportunity to make continued productive use of the site; and

WHEREAS, specifically, the applicant states that the proposed location of the eight parking spaces on the used automobile portion of the lot provides a center turning area, allowing easy access to each parked vehicle, as well as a space in the interior of the lot for washing and preparing vehicles,

and that the existing fence on the site maintains the separation between the two uses on the site without hampering maneuverability; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, the Board also directed the applicant to provide landscaping in the planting area at the rear of the site, and bring the signage into compliance with C2 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that new evergreen shrubs have been planted in the planting area at the rear of the site, a photograph showing that the automobile sales signage has been reduced, and a signage analysis reflecting that the site complies with C2 district signage regulations; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds 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 *reopens and amends* the resolution, as adopted on October 29, 1991, as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on October 29, 2021, and to permit an increase in the number of used cars available for sale at the site from five to eight; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received August 29, 2012’-(1) sheet and ‘October 22, 2012’-(1) sheet, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on October 29, 2021;

THAT the number of spaces devoted to used car sales will be limited to eight;

THAT there will be no parking of automobiles on the sidewalk at any time;

THAT there will be no used cars for sale parked on the street;

THAT there will be no outdoor repair work;

THAT the site will be maintained free of debris and graffiti;

THAT signage will comply with C2 district regulations;

THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 400113550)

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Adopted by the Board of Standards and Appeals,  
December 11, 2012.

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**67-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for H.N.F. Realty, LLC, owner; Cumberland Farms, Inc. lessee.

SUBJECT – Application July 27, 2012 – Extension of Term (§11-411) of an approved variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on March 17, 2012; Waiver of the Rules. C1-2 zoning district.

PREMISES AFFECTED – 260-09 Nassau Boulevard, north corner of intersection formed by Little Neck Parkway and Nassau Boulevard, Block 8274, Lot 135, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a prior grant for an automotive service station, which expired on March 17, 2012; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on December 11, 2012; and

WHEREAS, Community Board 11, Queens, recommends approval of this application with the following conditions: (1) the planted areas in the rear and at the corner of the property be properly landscaped and maintained free of debris; (2) the retaining wall on the north end of the property be repaired and maintained; (3) directional lines into and out of the site be clearly indicated by painted arrows on the ground; (4) no parking be allowed on landscaped area in the rear of the property; (5) service for those who require assistance be available and indicated by signage; (6) broken tiles on the floor of the store be replaced and the store maintained in good condition; and (7) usage of the storage trailer be identified on the plans; and

WHEREAS, the subject site is an irregularly-shaped lot located on the north corner of Little Neck Parkway and Nassau Boulevard, partially within a C1-2 (R4) zoning district and partially within an R1-2 zoning district; and

WHEREAS, the site has 231 feet of frontage on Little Neck Parkway, 100 feet of frontage on Nassau Boulevard, and a total lot area of 17,100 sq. ft.; and

WHEREAS, the site is occupied by a one-story automotive service station with an automotive repair shop and accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 15, 1947, when, under BSA Cal. No. 721-41-BZ, the Board granted a variance to permit an automotive service station with accessory uses; and

WHEREAS, subsequently, the term was extended and the grant amended by the Board at various times; and

WHEREAS, on March 17, 1992, under the subject calendar number, the Board granted the re-establishment of the expired variance, pursuant to ZR § 11-411, for a term of ten years; and

WHEREAS, most recently, on October 19, 2004, the Board granted a ten-year extension of term and an amendment to permit a minor reconfiguration of the sales area, private office, and utility room to facilitate the sale of convenience store items, and the placement of a container for storage and refrigeration of soft drinks, pursuant to ZR § 11-411 and 11-412, which expired on March 17, 2012; and

WHEREAS, the applicant now seeks an extension of term for ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted photographs and a letter reflecting that (1) the site’s landscaped areas have been cleaned and will be maintained on a weekly basis, (2) the retaining wall has been repaired, (3) the directional lines and parking lot striping on the site have been repainted, (4) parking will no longer be allowed on the landscaped area at the rear of the site, (5) decals have been added to the gasoline pumps advising customers to press the “help” button in the event a customer needs assistance, (6) the broken tiles on the floor of the store have been replaced, and (7) the storage trailer on the site is used for inventory for the accessory convenience store; and

WHEREAS, accordingly, based upon the submitted evidence, the Board finds 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 *reopens and amends* the resolution, as adopted on March 17, 1992, as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on March 17, 2022; *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received July 27, 2012’–(5) sheets, and *on further condition*:

THAT the term of this grant will be for ten years from the expiration of the prior grant, to expire on March 17, 2022;

THAT landscaping will be maintained in accordance with the BSA-approved plans;

THAT the site will be maintained free of debris and graffiti;

THAT no parking will be permitted on the landscaped area at the rear of the site;

THAT signage will comply with C1 district regulations;

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THAT the above conditions will be listed on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 401822550)

Adopted by the Board of Standards and Appeals, December 11, 2012.

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### 302-01-BZ

APPLICANT – Deirdre A. Carson, for Creston Avenue Realty, LLC, owner.

SUBJECT – Application April 30, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on April 23, 2012; Extension of Time to obtain a Certificate of Occupancy which expired on July 10, 2012. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, west side of Creston Avenue between East 190<sup>th</sup> and East 191<sup>st</sup> Streets, Block 3175, Lot 26, Borough of Bronx.

### COMMUNITY BOARD #3BX

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an extension of term of a previously approved variance for an accessory parking facility for commercial use, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on August 21, 2012 after due notice by publication in *The City Record*, with continued hearings on September 25, 2012, October 16, 2012 and November 20, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southwest corner of Creston Avenue and East 191<sup>st</sup> Street, partially within an R8 zoning district and partially within a C4-4 zoning district; and

WHEREAS, on December 7, 1948, under BSA Cal. No. 861-48-BZ, the Board granted a variance to permit the site to be used for the parking of more than five motor vehicles, for a term of two years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on January 10, 1988; and

WHEREAS, on April 23, 2002, under the subject calendar number, the Board reestablished the expired variance pursuant to ZR § 11-411, to permit an accessory parking facility for commercial use at the site, for a term of ten years, which expired on April 23, 2012; a condition of the grant was that a new certificate of occupancy be obtained by April 23, 2003; and

WHEREAS, most recently, on January 10, 2012, the Board granted a six month extension of time to obtain a certificate of occupancy, which expired on July 10, 2012; and

WHEREAS, the applicant now requests a ten-year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, the applicant also requests an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy has not been obtained due to delays at the Department of Buildings; and

WHEREAS, at hearing, the Board directed the applicant to clean up the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the required striping and directional arrows now appear clearly, the walls of the adjacent building are free of graffiti, and the lot has been swept clean; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated April 23, 2002, so that as amended this portion of the resolution shall read: “to permit an extension of term for an additional period of ten years from the expiration of the prior grant, to expire on April 23, 2022, and to grant an extension of time to obtain a certificate of occupancy for one year from the date of this resolution, to expire on December 11, 2013; *on condition*: that the use shall substantially conform to drawings as filed with this application, marked ‘Received September 11, 2012’–(1) sheet, and on further condition:

THAT the term of this grant shall be for ten years from the expiration of the prior grant, to expire on April 23, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT the above conditions will appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by December 11, 2013;



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THAT all conditions from the prior resolution not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 200683590)

Adopted by the Board of Standards and Appeals December 11, 2012.

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## 314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 437-51 West 13<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 12, 2012 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a 12-story commercial office and retail building, which will expire on November 24, 2013; waiver of the Rules. M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13<sup>th</sup> Street, southeast portion of block bounded by West 13<sup>th</sup>, West 14<sup>th</sup> and Washington Streets and Tenth Avenue, Block 646, Lot 19, 20, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez .....

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of a previously granted variance to permit the construction of a ten-story commercial building, which expires on November 24, 2013; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the site is located on the northwest corner of Washington Street and West 13<sup>th</sup> Street, in an M1-5 zoning district; and

WHEREAS, the site has 147'-0" of frontage on the north side of West 13<sup>th</sup> Street, 103'-3" of frontage on the west

side of Washington Street, and a lot area of 15,178 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since November 24, 2009 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a ten-story commercial building which does not comply with the zoning requirements for FAR, height and setback, and rear yard, and which provides Use Group 10 retail use, contrary to ZR §§ 43-12, 43-43, 43-26, and 42-12; and

WHEREAS, substantial construction is to be completed by November 24, 2013, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 24, 2013, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on December 11, 2016; *on condition*:

THAT substantial construction shall be completed by December 11, 2016;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 110115768)

Adopted by the Board of Standards and Appeals, December 11, 2012.

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## 107-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; Equinox 63<sup>rd</sup> Street, Inc. lessee.

SUBJECT – Application September 14, 2012 – Amendment to previously granted Special Permit (§73-36) for the increase (693 square feet) of floor area of an existing Physical Culture Establishment (*Equinox*). C10-8X/R8B zoning district.

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, southeast corner of intersection of East 63<sup>rd</sup> Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.

### COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

# MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4<sup>th</sup> Avenue Loft Corporation, owner.

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 zoning district.

PREMISES AFFECTED – 59 Fourth Avenue, 9<sup>th</sup> Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the First Deputy Commissioner of the Department of Buildings (“DOB”) on November 23, 2010 (the “Final Determination”), which states, in pertinent part:

The request to establish legality for a nonconforming advertising sign on the subject premises is hereby denied.

The evidence submitted fails to establish that a lawful advertising sign was established and not discontinued as per 52-831; and

WHEREAS, a public hearing was held on this appeal on August 13, 2011 after due notice by publication in *The City Record*, with a continued hearing on October 23, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of Fourth Avenue, between East Ninth Street and East Tenth Street, within a C6-2A zoning district; and

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<sup>1</sup> DOB notes that the Final Determination improperly cites ZR § 52-83 as the basis for the denial, and that ZR §§ 52-11 and 52-61 should have been cited, as DOB’s determination was that insufficient evidence had been submitted to demonstrate that a painted wall advertising sign was lawfully established at the subject site and never discontinued for a period of two or more years.

WHEREAS, the site is occupied by an eight-story mixed-use commercial/residential building (the “Building”); the southern façade of the Building (the “Wall”) has been used to display signage since approximately 1900, including a painted advertising sign on the upper corner of the Wall (the “Sign”), which is the subject of this appeal; and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign (the “Appellant”); and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

### PROCEDURAL HISTORY

WHEREAS, on January 26, 2009, DOB issued a stop work order for “outdoor advertising company sign on display structure without permit...”; and

WHEREAS, on May 24, 2010, the Appellant filed a permit application (Job No. 120353606) with DOB for a 1,000 sq. ft. (25’-0” by 40’-0”) non-illuminated painted advertising wall sign; the application stated that the sign complied with the non-conforming advertising sign regulations; and

WHEREAS, on June 8, 2010, DOB denied the permit application, finding that there was insufficient evidence that the sign was lawfully established and not discontinued; and

WHEREAS, on October 23, 2010, the Appellant filed a Zoning Resolution Determination Form (“ZRDI”) with the Manhattan Borough Office requesting an override of all objections and a determination that the Sign is permitted as a legal non-conforming advertising sign; and

WHEREAS, on November 23, 2010, DOB issued the Final Determination denying the Appellant’s ZRD1 request; and

WHEREAS, the Appellant initially sought a determination from the Board that signage located on the lower portion of the Wall was also permitted as a legal non-conforming advertising sign; however, the Appellant did not pursue its arguments with respect to the lower portion of the Wall; and

### RELEVANT ZONING RESOLUTION PROVISIONS

#### ZR § 12-10 (*Definitions*)

Non-conforming, or non-conformity

A “non-conforming” #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

\* \* \*

#### ZR § 52-11 (*Continuation of Non-Conforming Uses*)

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

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#### ZR § 52-61 (*Discontinuance*)

General Provisions

If, for a continuous period of two years, either the

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#nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

## THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-2A zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant must meet the Zoning Resolution's criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful *use*, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: "[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming *use*"; and

WHEREAS, in this case, the Appellant must also show that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to restrict advertising signage in the district where the subject site is located; and

WHEREAS, accordingly, DOB asserts that as per the Zoning Resolution, the Appellant must establish that the use was lawfully established before it became unlawful, by zoning, on June 28, 1940 as well as on December 15, 1961, the date the 1961 Zoning Resolution was enacted, and it must have continued without any two-year period of discontinuance since December 15, 1961; and

WHEREAS, thus, the Board notes that the standard to apply to the subject sign is (1) the sign existed lawfully on June 28, 1940 and December 15, 1961, and (2) that the use did not change or cease for a two-year period since December 15, 1961. See ZR §§ 12-10, 52-61; and

## LAWFUL ESTABLISHMENT

WHEREAS, the Appellant states that a sign has existed on the Wall since at least 1900, originally as a painted advertising sign; and

WHEREAS, the Appellant contends that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to define and distinguish "advertising" signs from "accessory" signs; and

WHEREAS, the Appellant states that while the 1940 text amendment restricted advertising signage in the district where the subject site is located, by that time the Wall had been used to display signage, including advertising signage, for approximately 40 years; and

WHEREAS, the Appellant asserts that the Wall continued to be used for advertising signage prior to and after December 15, 1961; and

WHEREAS, in support of the existence of advertising signage on the Wall prior to June 28, 1940, the Appellant submitted photographs, copies of the business directory for the City of New York, and newspaper/magazine articles; and

WHEREAS, in support of the existence of the signage on the Wall prior to and since December 15, 1961, the Appellant submitted photographs reflecting that a "Hebrew National" painted advertising sign was located on the upper portion of the Wall from at least June 1, 1960 through 1965 or later; and

WHEREAS, accordingly, the Appellant states that a painted advertising sign was lawfully established on the upper portion of the Wall prior to the enactment of the 1961 Zoning Resolution; and

WHEREAS, DOB states that it accepts the Appellant's photographic and documentary evidence of the existence of advertising signage prior to June 28, 1940 through 1960; and

WHEREAS, DOB further states that it accepts the Appellant's evidence demonstrating the "Hebrew National" painted advertising sign existed prior to 1961 through 1965; and

WHEREAS, accordingly, DOB agrees that an advertising sign was lawfully established at the site prior to December 15, 1961 and lawfully existed on December 15, 1961, and therefore the owner of the site achieved a right to maintain a painted advertising sign in the same location and position of the "Hebrew National" sign, provided that such sign was not discontinued for a period of two or more years; and

## CONTINUITY OF THE SIGN

WHEREAS, at the outset, DOB states that the Appellant has submitted sufficient evidence to demonstrate continuity of the non-conforming advertising sign on the top portion of the Wall from 1961 through 1992 and from 2005 until the filing of subject appeal; and

WHEREAS, accordingly, the Board finds it appropriate to limit its review of the continuity of the Sign to the period from 1992 through 2005, which is the only time period for which DOB has alleged a discontinuance of the Sign for a period in excess of two years, contrary to ZR § 52-61; and

### • Appellant's Position

WHEREAS, the Appellant submitted photographs, leases, and letters as primary evidence to establish the continuity of use of the Sign between 1992 and 2005; and

WHEREAS, the Appellant also submitted an affidavit from Patrick Curley, a resident of the Building and President of the 4<sup>th</sup> Avenue Loft Corporation stating that a sign has been located on the south facing wall from 1978 continuously through the present (the "Curley Affidavit"), and an affidavit

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from Chris Mitrofanis, the owner of the adjacent retail establishment at 59 Fourth Avenue, stating that the upper wall has been used for advertising signs continuously from 1984 through 2009, with no two-year period of discontinuance during that time (the “Mitrofanis Affidavit”) (collectively, the “Affidavits”); and

WHEREAS, in support of the existence of the Sign in 1992, the Appellant submitted: (1) a photograph of a painted advertising sign for “Tower Records” on the upper portion of the Wall, along with evidence that the photograph was taken in approximately 1992; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1993, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1994, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; (2) an option agreement dated July 14, 1994 between the owner and Transportation Displays Incorporated/TDI (“TDI”) granting the exclusive option for TDI to lease the south wall of the Building for the purpose of affixing advertising copy thereto for one year (the “1994 Option Agreement”); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1995, the Appellant submitted: (1) a photograph showing the Building with the same painted advertising sign for “Tower Records” which it asserts was taken in June 1995 (the “Appellant’s June 1995 Photograph”); (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1996, the Appellant submitted: (1) the June 1995 Photograph of the “Tower Records” sign; (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1997, the Appellant submitted: (1) a photograph showing a sign with illegible copy on the upper portion of the Wall, dated October 1997; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1998, the Appellant submitted: (1) the 1997 photograph; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1999, the Appellant submitted: (1) a photograph showing an advertising sign for “Fetch-O-Matic” on the upper portion of the Wall, along with evidence that the photograph was taken in 1999 or 2000 (the “1999/2000 Fetch-O-Matic Photograph”); and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2000, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) an October 6, 2000 letter from Vista Media Group, Inc., stating that it assumed the lease rights and obligations under the lease with TDI/Outdoor Systems/Infinity, and noting that the monthly lease payment was enclosed (the “October 6, 2000 Letter”); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2001, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the October 6, 2000 Letter; (3) a “Wallscape Rental Agreement” dated August 27, 2001

granting Vista Media Group, Inc., the use of a portion of the south wall of the property for the display of signage, for a term of five years, commencing on January 15, 2002 (the “August 27, 2001 Five-Year Lease”); and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign from 2002 through 2005, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the August 27, 2001 Five-Year Lease; and (3) the Affidavits; and

WHEREAS, based on the above, the Appellant asserts that it has established that the Sign was continuously in existence as an advertising sign from 1992 through 2005, without any two-year period of discontinuance; and

- Department of Buildings’ Position

WHEREAS, DOB asserts that there is insufficient evidence to show continuity of the non-conforming advertising sign on the upper portion of the Wall from 1992 through 2005; and

WHEREAS, DOB states that its Sign Enforcement Unit discovered a photograph dated 1995 on a website called [nycsubway.org](http://nycsubway.org), which shows only the faded remnants of a painted sign on the upper portion of the Wall (the “1995 DOB Photograph”); and

WHEREAS, DOB further states that it is unable to reconcile the fact that the photograph allegedly taken in June 1995 submitted by the Appellant shows only a slightly faded painted advertising sign for Tower Records while the 1995 DOB Photograph shows a significantly faded painted advertising sign; and

WHEREAS, DOB notes that the Appellant’s June 1995 Photograph was originally submitted at the Board’s October 23, 2012 hearing as taken in June 1993, and asserts that if the photograph was taken in June 1995 then the Appellant is claiming that the Tower Records painted sign existed from 1987 to June 1995 with only slight fading, but from June 1995 until the time when the 1995 DOB Photograph was taken, the painted Tower Records advertising sign faded away significantly; and

WHEREAS, DOB notes that the 1997 photograph submitted by the Appellant similarly shows only the faded remnants of a painted sign on the upper portion of the Wall; and

WHEREAS, DOB states that its Sign Enforcement Unit also discovered a photograph on the [flickr.com](http://flickr.com) website dated September 10, 2001, which again shows only the faded remnants of a painted sign on the upper portion of the Wall (the “September 10, 2001 DOB Photograph”), which is consistent with the 1995 DOB Photograph and the Appellant’s 1997 photograph; and

WHEREAS, DOB further states that the September 10, 2001 DOB Photograph shows the identical advertising sign on the lower portion of the Wall (entitled “Rivet Up”) as existed on the Appellant’s June 1995 Photograph; and

WHEREAS, DOB asserts that the September 10, 2001 DOB Photograph calls into question the authenticity of the Appellant’s June 1995 Photograph because it is not plausible that an advertising copy for “Rivet Up” existed both in June 1995 and on September 10, 2001, particularly when there are

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several photographs between that time period which show a different advertising copy on the lower portion of the Wall; and

WHEREAS, DOB notes that the Appellant's June 1995 Photograph and the 1999/2000 Fetch-O-Matic Photograph are from "private collections" and that the Appellant has not submitted affidavits from the photographer attesting to the date they were taken, and indicates that as such they should be given less weight than the 1995 DOB Photograph and the September 10, 2001 DOB Photograph, both of which are publicly available; and

WHEREAS, accordingly, based on the photographs from 1995, 1997, and 2001 which DOB contends show only the faded remnants of a painted sign, and the questionable credibility of the Appellant's June 1995 Photograph, DOB concludes that the Appellant has failed to establish the continuity of the advertising sign on the upper portion of the Wall, as required by ZR § 52-61; and

## APPELLANT'S RESPONSE TO DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, in response to DOB's position regarding the authenticity of the Appellant's June 1995 Photograph, the Appellant asserts that 1995 is the most likely year that the photograph was taken; and

WHEREAS, the Appellant states that the date of this photograph was determined by scrutinizing the details of the photograph, including: (1) a scaffolding in front of the building located at 21 Astor Place (Block 545, Lot 7503), and that DOB records indicate that Permit No. 101007928 was approved on March 13, 1995 for a sidewalk shed at the site; (2) the building at 770 Broadway is boarded with a sidewalk shed and therefore the Kmart store that currently occupies the space, and which the Appellant established through a newspaper article opened in November 1996, had not yet opened; and (3) a 23-story building that was constructed on East 12<sup>th</sup> Street between Third Avenue and Fourth Avenue in 1996 is not visible in the photograph, and therefore was not constructed yet; and

WHEREAS, therefore, Appellant argues that the photograph was clearly taken prior to the 1996 opening of Kmart at 770 Broadway and the completion of the 23-story building, and the existence of the sidewalk shed at 21 Astor Place indicates that it was taken after March 13, 1995; and

WHEREAS, the Appellant states that the 1995 DOB Photograph shows that the lower portion of the Wall was occupied by an advertisement for an Old Navy store that the Appellant contends did not open until November of 1995, and therefore argues that the photograph was more likely taken in 1996 or later, because there are leaves on the trees in the photograph; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Appellant contends that the date on the photograph is likely incorrect, as the photograph is from [flickr.com](http://flickr.com), and the dating system for the website relates to the date the photograph was uploaded, not necessarily the date it was taken; and

WHEREAS, the Appellant provides an example of a

photograph on [flickr.com](http://flickr.com) that was taken in 1978 but for which the website states "this photo was taken on July 16, 2006"; therefore, the Appellant asserts that the date listed on the website for the photograph is not necessarily an accurate depiction of the date the photograph was taken; and

WHEREAS, as to DOB's concerns regarding the 1999/2000 Fetch-O-Matic Photograph, the Appellant submitted an affidavit from the photographer (the Mitrofanis Affidavit) which states that the photograph was taken in or around 1999, and the Appellant also submitted an August 29, 2000 press release for FetchOMatic.com, announcing an upcoming advertising campaign for the new company; and

WHEREAS, in response to DOB's indication that the photographs submitted by the Appellant should be given less weight because they are from private collections rather than publicly accessible sources, the Appellant notes that DOB Technical Policy and Procedure Notice 14/1988, which DOB issued to establish guidelines for DOB's review of whether a non-conforming use has been continuous, does not state that an appellant must provide publicly accessible photographs, or that such photographs are given more weight than photographs from private collections; and

WHEREAS, accordingly, the Appellant claims that the dates of the photographs it submitted from 1995, 1997, and 1999/2000 are credible, and along with the Affidavits, the 1994 Option Agreement, the 2000 Letter, and the 2001 Five-Year Lease, are sufficient to establish the continuous use of the advertising sign on the upper portion of the Wall from 1992 through 2005; and

## CONCLUSION

WHEREAS, the Board finds that the Appellant has met its burden of establishing that the Sign was lawfully established prior to December 15, 1961 and has been in continuous use, without any two-year interruption since that date; and

WHEREAS, specifically, the Board finds the evidence submitted by the Appellant sufficient to establish the continuous use of the Sign on the upper portion of the Wall from 1992 through 2005, the only time period contested by DOB; and

WHEREAS, as to the evidence submitted by the Appellant to establish the continuous use of the Sign during this time period, the Board notes that the Appellant provided evidence in the form of photographs, leases, option agreements, letters, and affidavits, and that some combination of this evidence was provided for each year beginning from 1992 through 2005; and

WHEREAS, as to the credibility of the Appellant's June 1995 Photograph, the Board finds the Appellant's methodology for determining the date of the photograph compelling, in that it clearly was taken prior to 1996, and the presence of the sidewalk shed in front of the 21 Astor Place building, for which the Appellant found a permit was issued by DOB on March 13, 1995, indicates that it was likely taken in 1995; and

WHEREAS, the Board does not consider the fact that the Appellant originally presented the photograph at the



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Board's October 23, 2012 hearing as being taken in June 1993 to undermine the credibility of the photograph; and

WHEREAS, specifically, the Board notes that even if the photograph was taken in June 1993, it still serves as relevant evidence of the continuity of the Sign, as it reflects that the same Tower Records sign that is shown in the 1992 photograph remained in place in 1993; and

WHEREAS, as to the 1995 DOB Photograph, the Board notes that it shows a faded sign on the upper portion of the Wall, similar to that shown in the 1997 photograph submitted by the Appellant; however, the Board does not find that these photographs necessarily contradict the Appellant's June 1995 Photograph; and

WHEREAS, the Board notes that while the Sign may be faded in 1995 DOB Photograph and the Appellant's 1997 photograph, these photographs still clearly show a painted sign on the upper portion of the Building, and DOB has not articulated any standard by which to determine at what point a painted sign becomes discontinued on the basis of faded copy; and

WHEREAS, as to the 1999/2000 Fetch-O-Matic Photograph, the Board finds the Mitrofanis Affidavit combined with the August 29, 2000 press release submitted by the Appellant to be sufficient evidence to establish that the photograph was taken in 1999 or 2000; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Board agrees with the Appellant that the dating system for the website [flickr.com](http://flickr.com) is not reliable, in that it appears to be based on the date the photograph was uploaded and not necessarily the date the photograph was actually taken; and

WHEREAS, the Board disagrees with DOB's contention that the September 10, 2001 DOB Photograph necessarily calls into question the authenticity of the Appellant's June 1995 Photograph because there is an identical advertising sign for "Rivet Up" on the lower portion of the Building in both photographs; rather, the Board finds that the presence of the "Rivet Up" sign in both photographs actually makes it more likely that the September 10, 2001 DOB Photograph was actually taken closer to the date of the Appellant's June 1995 Photograph, since the Board finds the Appellant's evidence that the latter photograph was taken prior to 1996 to be compelling and because there is no "Rivet Up" sign in the 1999/2000 Fetch-O-Matic Photograph; and

WHEREAS, the Board agrees with the Appellant that the fact that the Appellant's June 1995 Photograph and 1999/2000 Fetch-O-Matic Photograph are from private collections while the photographs submitted by DOB are publicly accessible does not automatically entitle the latter to more weight; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted sufficient evidence to establish that the Sign has been in continuous use from 1992 through 2005, without any two-year interruption; and

WHEREAS, the Board accepts DOB's determination that the painted advertising sign was lawfully established prior to June 28, 1940 as well as December 15, 1961 and has been

in continuous use without any two-year interruption from 1961 through 1992 and from 2005 until the date the subject application was filed; and

WHEREAS, the Board notes that while the Appellant is requesting that the Board permit a 25'-0" by 40'-0" (1,000 sq. ft.) painted advertising sign on the upper portion of the Wall, the permitted size and location of the Sign is limited to the dimensions and location of the Hebrew National sign which existed on the site from 1960 through 1965; and

WHEREAS, while no evidence has been submitted as to the exact dimensions of the Hebrew National sign, the Board notes that if DOB determines that the Appellant's requested dimensions of 25'-0" by 40'-0" (1,000 sq. ft.) exceed the dimensions of the Hebrew National sign, the latter will be controlling; and

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on November 23, 2010, is granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

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## 88-12-A & 89-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq.,  
Van Wagner Communications, LLC

OWNER OF PREMISES – Name Mutual, LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. C6-4 zoning district.

PREMISES AFFECTED – 462 11<sup>th</sup> Avenue, between 37<sup>th</sup> and 38<sup>th</sup> Streets, Block 709, Lot 3, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for two signs at the subject site (the "Final Determinations"), which read, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, the intent of viewing is not relevant in this assessment and as such, the sign is rejected from registration. While we recognize your assertion that the sign was not intended to be visible from arterial, we affirm our rejection. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

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WHEREAS a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located at the southeast corner of Eleventh Avenue and West 38<sup>th</sup> Street, in a C6-4 zoning district; and

WHEREAS, the site is a vacant lot and is occupied by a sign structure with a height of 130 feet that contains two north-facing signs (the "Signs"); the lot is also occupied by two south-facing signs, which DOB has not objected to and are not discussed in the appeal; and

WHEREAS, the Appellant states that the Signs are rectangular advertising signs each measuring 20 feet in height by 60 feet in length for a surface area of 1,200 sq. ft., with the lower sign (the "Lower Sign") located at a height of between 36 feet and 56 feet and the upper sign (the "Upper Sign") located at a height of between 110 feet and 130 feet; and

WHEREAS, the Appellant states that the signs face Eleventh Avenue and are located two blocks to the southwest of the entrance to the approaches to the Lincoln Tunnel at West 39<sup>th</sup> Street and West 40<sup>th</sup> Street, between Tenth and Eleventh avenues; and

WHEREAS, the Appellant states that when the Signs were installed in 2000, the site was within an M1-5 zoning district, but that pursuant to a 2005 rezoning, the site is now zoned C6-4 within the Special Hudson Yards District; and

WHEREAS, the Upper Sign is located 350'-11" and the Lower Sign is located 327'-0" from an entrance to the Lincoln Tunnel, a designated arterial highway pursuant to Zoning Resolution Appendix H; and

WHEREAS, this appeal is brought on behalf of the owner of the sign structure (the "Appellant"); and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the Signs are not "within view" of an arterial highway and are not subject to the limitations associated with signs within view of arterial highways; and (2) the Signs were constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Signs are not "within view" of an arterial highway; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## REGISTRATION REQUIREMENT

WHEREAS, the Appellant identifies the relevant statutory requirements related to sign registration in effect since 2005; and

WHEREAS, the Appellant states that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under

Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the Appellant asserts that the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, the Appellant notes that affidavits are also listed as an acceptable form of evidence; and

WHEREAS, the Appellant cites to a guidance document provided by DOB, which sets forth the instructions for filing under Rule 49 and asserts that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB-issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

## REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1,

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2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Signs; (2) photographs of the Signs; and (3) Permit Nos. 102681849-01-AL, 102724580-01-SG, 102789939-010-AL, and 102788306-01-SG, along with Notices of Completion for each application; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "Failure to provide proof of legal establishment – 2000 Permit . . . states not adjacent to arterial;" and

WHEREAS, by letter, dated December 14, 2011, the Appellant submitted a response to DOB, noting that DOB had issued permits for the Signs in 2000 and that the Appellant had operated the Signs for more than a decade in reliance on DOB's permits; and

WHEREAS, the Appellant also included evidence demonstrating that the Signs were installed to be visible towards Eleventh Avenue and the only designated arterial highway in proximity of the site (the approaches to the Lincoln Tunnel) is separated from the Signs by two streets such that the Signs are substantially obstructed from being viewed from the approaches; and

WHEREAS, by letter, dated January 6, 2012, the Appellant made a submission to DOB of photographs to support its position that the Signs are directed toward Eleventh Avenue and any view from the Lincoln Tunnel approach is substantially obstructed; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the determinations which form the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

## RELEVANT STATUTORY PROVISIONS

### ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

### M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

- (a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

- (b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

- (c) The more restrictive of the following shall apply:

- (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
- (2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

\* \* \*

### ZR § 42-58

Signs Erected Prior to December 13, 2000

### M1 M2 M3

In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date.

\* \* \*

### Building Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control



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# MINUTES

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of such outdoor advertising company in accordance with the following provisions:

- (1) The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming...

\* \* \*

RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for the purposes of compliance with the Zoning Resolution:

- (a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or
- (b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot; and

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs are not “within view” of an arterial highway and are not subject to the limitations associated with signs within view of arterial highways; and (2) the Signs were constructed pursuant to DOB-issued permits, which reflects DOB’s acceptance that the Signs are not “within view” of an arterial highway; and

1. The Signs are Not “Within View” of an Arterial Highway

WHEREAS, the Appellant asserts that DOB misinterprets the meaning of “within view” under ZR § 42-55; and

WHEREAS, the Appellant notes that the Zoning Resolution does not define “within view,” however they look to ZR § 42-55 subsections (c)(1) and (c)(2), which include in their criteria for coverage by the regulations that the sign’s “message is visible” from an arterial highway; and

WHEREAS, additionally, the Appellant notes that the Zoning Resolution does not define what constitutes a “message” being “visible,” so they find that a plain language interpretation is required; and

WHEREAS, the Appellant cites to Webster’s Dictionary which defines “message,” as “a written or oral communication or other transmitted information sent by messenger or by some other means (as by signals)” or “a group of words used to advertise or notify;” and

WHEREAS, the Appellant also cites to the dictionary for the definition of “visible,” which states “capable of being seen,” “easily seen,” or “capable of being perceived mentally;” and

WHEREAS, the Appellant concludes that according to the definitions, the intent of the zoning is to limit the applicability of ZR § 42-55 to signs that actually communicate their message to persons that are on an arterial highway and would not be applicable to a sign that is substantially obstructed such that the message of the obstructed sign cannot be communicated to a person on the arterial highway; and

WHEREAS, in contrast, the Appellant asserts that ZR § 42-55 does not apply to a sign that does not face an arterial highway or a sign that is obstructed by objects between the sign and the arterial highway because those signs are incapable of communicating or advertising; and

WHEREAS, the Appellant submitted photographs and maps in support of its position that the Signs are situated to read to Eleventh Avenue and advertising copy on the Signs is sold for the purpose of showing on Eleventh Avenue, particularly given that there are two intervening streets, numerous trees, and walls surrounding the entrance to the Lincoln Tunnel which prevent communication of the Signs’ message to persons traveling into the tunnel; and

WHEREAS, the Appellant asserts that the Signs are not discernible from cars approaching the tunnel from the north and are not visible at all from the eastern approach; and

WHEREAS, the Appellant asserts that a utility tower

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(including a spiral staircase and lighting), several trees, and the tunnel entrance walls prevent travelers from discerning the Signs' messages; and

WHEREAS, the Appellant asserts that there is just a fleeting moment when none of the obstructions are in the way of the sign and the Signs are in view, but it does not provide a situation in which the "message is visible," as required for ZR § 42-55 to apply under a plain language reading; and

WHEREAS, the Appellant states that the Google Streetview photograph DOB submitted is taken at that fleeting moment when the Signs appear and even then they are not discernible; and

WHEREAS, the Appellant reiterates that the intent of the Signs was to communicate with viewers travelling on Eleventh Avenue and because they are not discernible from any approach to the Lincoln Tunnel, ZR § 42-55 does not apply; and

WHEREAS, the Appellant further notes that DOB provides its own definition of "within view" in Rule 49 as follows: "the term 'within view' shall mean that part or all of the sign copy, sign structure, or sign location that is discernible;" and

WHEREAS, the Appellant asserts that through Rule 49, DOB exceeded its authority by creating a new definition of "within view" which DOB has construed otherwise since December 15, 1961; and

WHEREAS, the Appellant asserts that if the Rule 49 definition is disregarded, and only the plain language interpretation of the "within view" standards of ZR § 42-55 is applied, the message of the Signs is not visible from the approach of the Lincoln Tunnel and ZR § 42-55 does not apply to the Signs; and

WHEREAS, in sum, the Appellant states that where only a portion of the sign is visible from an arterial highway for only a fleeting moment and the message of the sign is not visible, the sign is not "within view" of the arterial highway within the meaning of ZR § 42-55; and

## 2. The Signs were Constructed Pursuant to DOB-Issued Permits

WHEREAS, the Appellant asserts that the Signs were constructed pursuant to DOB-issued permits, which reflects DOB's agreement at the time of permit issuance that the Signs were not "within view" of an arterial highway and that DOB's reversal of position with respect to its prior confirmation of the legality of the Signs is improper; and

WHEREAS, the Appellant asserts that it provided DOB with evidence of permits, which demonstrate that the signs were installed pursuant to lawfully-issued permits, which were issued when the Signs were permitted in the underlying M1-5 zoning district and DOB was aware of their location vis a vis the Lincoln Tunnel approaches, but permitted the Signs pursuant to its interpretation of then-ZR § 42-53 (which has been recodified as ZR § 42-55); and

WHEREAS, the Appellant asserts that DOB has changed its position with regard to the application of ZR § 42-55 and that Local Law 31 did not give DOB the authority

to create a new interpretation of long-standing language requiring that a sign be "within view" of an arterial highway and at the time of the permit issuance, DOB did not consider the Signs to be within view of any arterial highway; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Signs, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Signs; and

## DOB'S POSITION

WHEREAS, DOB asserts that it rejected the Sign Registration Applications because the August 4, 2000 permit for the Upper Sign and the December 13, 2000 permit for the Lower Sign were unlawful and improperly issued since the surface area of the Signs did not comply with the requirements of then-ZR § 42-53; ZR § 42-53, in effect at the time the 2000 permits were issued, regulated advertising signs that were within view of arterial highways in Manufacturing Districts and stated, in pertinent part:

No advertising sign shall be located, nor shall an advertising sign be structurally altered, relocated or reconstructed, within 200 feet of an arterial highway or of a public park with an area of one-half acre or more, if such advertising sign is within view of such arterial highway . . . Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface are on the face of such sign; and

WHEREAS, therefore, DOB states that signs in manufacturing districts, like the M1-5 district the Signs were in at the time of their installation in 2000 until 2005 when the area was rezoned to be within a C6-4 zoning district, were and still are permitted as-of-right under the current ZR § 42-55 (under which the former ZR § 42-53 was recodified) with certain restrictions, when located more than 200 feet from an arterial highway; and

WHEREAS, however, DOB states that such signs are limited in surface area based on their distance from the arterial highway; and

WHEREAS, DOB disagrees with the Appellant's position that the Signs are not subject to the restrictions on surface area set forth in the former ZR § 42-53 because they are not "within view" of the arterial highway – the Lincoln Tunnel and approaches; and

WHEREAS, DOB states that it has examined photographs of the signs taken from the approaches and finds that both the Upper and Lower signs are clearly visible and thus "within view" of the approach to the tunnel; and

WHEREAS, DOB notes that the Appellant's effort to register the Signs reflects a concession on the Appellant's part that the Signs are within view of the arterial highway since Rule 49-15 specifically requires "a sign inventory that shall include all signs, sign structures and sign locations located (1) within a distance of 900 linear feet from and within view of an arterial highway; or (2) within 200 linear

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# MINUTES

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feet from and within view of a public park of one half acre or more;” and

WHEREAS, DOB asserts that since the Upper Sign is within view of the arterial highway and located 350 feet from it, the maximum permitted surface area of the Upper Sign was 350 sq. ft. when the 2000 Permit was erroneously issued; DOB notes that the 2000 Permit and the Sign Registration Application both indicate a surface area of 1,200 sq. ft., which exceeded the then-ZR § 42-53 and still exceeds the permitted surface area per the current ZR § 42-55; and

WHEREAS, accordingly, DOB finds that the 2000 Permit for the Upper Sign was unlawful and improperly issued and the Upper Sign must be removed since no advertising sign is permitted as-of-right in the current C6-4 zoning district pursuant to ZR § 32-63; and

WHEREAS, similarly, because the Lower Sign is within view of the arterial highway and located 327 feet from it, the maximum permitted surface area of the Lower Sign was 327 sq. ft. when the 2000 Permit was issued and no advertising sign is permitted as-of-right in the current C6-4 zoning district pursuant to ZR § 32-63; and

WHEREAS, DOB states that the Appellant cites to ZR § 42-58 but does not make an argument that the Upper Sign should be granted non-conforming use status pursuant to ZR § 42-58 and any such future claim that the Upper Sign should be granted non-conforming use status is without merit; and

WHEREAS, DOB cites to ZR § 42-58, which states in pertinent part:

A sign erected prior to December 13, 2000, shall have non-conforming use status pursuant to Section 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of non-conformity of such sign as of such date with the provisions of Section 42-52, 42-53, and 42-54, where such sign shall have been issued a permit by the Department of Buildings on or before such date; and

WHEREAS, DOB concludes that the Upper Sign’s August 4, 2000 permit was unlawful and improperly issued since the proposed sign did not comply with the surface area requirements of then- ZR § 42-53; therefore, the sign cannot be granted non-conforming use status under ZR § 42-58; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the Signs are within view of the Lincoln Tunnel approaches and thus subject to the restrictions of ZR § 42-55; and

WHEREAS, on the analysis of the meaning of “within view,” the Board finds that the Appellant’s assertions about intent are misplaced and the Appellant’s interpretation of the meaning of the term is strained; and

WHEREAS, the Board notes that (1) there is not any indication in the text that the intended audience for signs is relevant, and (2) the plain meaning of “within view” is a more objective and less-nuanced concept than the Appellant

proposes; and

WHEREAS, the Board finds that regardless of whether travelers on the approaches were the intended audience for the Signs, if they are within the travelers’ view, ZR § 42-55 must apply; and

WHEREAS, the Board finds that the goal of the statute was to regulate signs within view of arterial highways and that enforcement is best-served by applying an objective standard, rather than a subjective standard involving a scale of the levels of visibility; and

WHEREAS, the Board finds that the Appellant’s approach and emphasis on discernibility of a message is untenable due to the individuality associated both with the sense of sight and the amount of time it takes to communicate a message as well as the broad range of advertising messages, which can include large logos and illustrations or smaller text; and

WHEREAS, similarly, the Board is not persuaded that obstructions (like trees and walls) along the arterial highway at certain points along the traveler’s path render the Signs outside of view; and

WHEREAS, the Board notes that the “fleeting moment” the Appellant claims the Signs can be viewed, first recognizes that they can be viewed and secondly, introduces yet another level of subjectivity as that “fleeting moment” could be longer in instances when traffic has slowed or stopped; and

WHEREAS, the Board notes that a representative of the sign company, in a letter to DOB dated December 11, 2011 stated “[w]hile [the Signs] may also be within view from an entrance to the Lincoln Tunnel, that was not the intended target of the sign;” and

WHEREAS, as to the Appellant’s contention that DOB has inequitably changed its position on the meaning of “within view,” the Board notes that there is no indication that DOB formerly had a different interpretation of “within view,” or that it relies on the definition set forth in Rule 49; but, even if DOB did change its position, it has the ability to correct erroneous determinations; and

WHEREAS, the Board declines to take a position on the fairness of DOB’s rejection of the registration after erroneously issuing the 2000 permits, but it does note that the Appellant has enjoyed the benefit of the 1,200-sq.-ft. Signs since that time; and

WHEREAS, the Board also declines to take a position on whether the Upper Sign could be established as a legal non-conforming sign because that alternate relief was not at issue in the appeal; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Signs and neither is permitted; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant’s registration of the Signs.

*Therefore it is resolved* that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated March 12, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals,

# MINUTES

December 11, 2012.

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**117-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Van Wyck Expressway & Atlantic Avenue, Block 9989, Lot 70. Borough of Queens.

**COMMUNITY BOARD #12Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**118-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & Queens Boulevard, Borough of Queens.

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**119-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 31<sup>st</sup> Street, Block 1137, Lot 22. Borough of Queens.

**COMMUNITY BOARD #1Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**120-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 31<sup>st</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

**COMMUNITY BOARD #1Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**121-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeals challenging the Department of Building’s determination that signs located on railroad properties are subject to New York City signage regulation. R4, M1-1 zoning district.

PREMISES AFFECTED – BQE & 32<sup>nd</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

**COMMUNITY BOARD #1Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**122-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

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SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 32<sup>nd</sup> Avenue, Block 1137, Lot 22. Borough of Queens.

**COMMUNITY BOARD #1Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**123-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1. Borough of Queens.

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**124-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – BQE & 34<sup>th</sup> Avenue, Block 1255, Lot 1. Borough of Queens

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**125-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1. Borough of Queens.

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**126-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway, East of 25<sup>th</sup> Street, Block 110, Lot 1. Borough of Queens.

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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**127-12-A**

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Northern Boulevard and BQE, Block 1163, Lot 1. Borough of Queens.

**COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

# MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 128-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Queens Boulevard and BQE, Block 1343, Lot 129 & 139, Borough of Queens.

### COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 129-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Queens Boulevard and 74<sup>th</sup> Street, Block 2448, Lot 213. Borough of Queens.

### COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 130-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that

multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Skillman Avenue, b/t 28<sup>th</sup> and 29<sup>th</sup> Street, Block 72, Lot 250. Borough of Queens.

### COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 131-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 132-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Van Wyck Expressway n/o Roosevelt Avenue, Block 1833, Lot 230. Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 133-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Woodhaven Boulevard N/O Elliot Avenue, Block 3101, Lot 9. Borough of Queens.

### COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 134-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4. Borough of Queens.

### COMMUNITY BOARD #5Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 135-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Long Island Expressway & 74<sup>th</sup> Street, Block 2814, Lot 4. Borough of Queens.

### COMMUNITY BOARD #5Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 171-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Cross Bronx Expressway E/O Sheridan Expressway. Borough of Bronx.

### COMMUNITY BOARD #9BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 172-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Cross Bronx Expressway & Bronx River, Block 3904, Lot 1. Borough of Bronx.

### COMMUNITY BOARD #6BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 173-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that

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multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Cross Bronx Expressway E/O Bronx River & Sheridan Expressway, Block 3904, Lot 1. Borough of Bronx.

## COMMUNITY BOARD #6BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 174-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 175-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – I-95 & Hutchinson Parkway, Block 4411, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 176-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

## COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 177-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Boulevard & Hunts Point Avenue, Block 2734, Lot 30. Borough of Bronx.

## COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 178-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Expressway N/O 156<sup>th</sup> Street, Block 2730, Lot 101. Borough of Bronx.

## COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and



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Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 179-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Bruckner Expressway N/O 156<sup>th</sup> Street, Block 2730, Lot 101. Borough of Bronx.

### COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 180-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway S/O Van Cortland, Block 3269, Lot 70. Borough of Bronx.

### COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ross Markowitz.

For Opposition: Mark Davis, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 273-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan @ 167<sup>th</sup> Street, 2539, Lot 502. Borough of Bronx.

### COMMUNITY BOARD #4BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 274-12-A

APPLICANT – Stroock & Stroock & Lavan, LLP, for CBS Outdoor Inc., lessee.

OWNER OF PREMISES – Long Island Railroad/MTA, CSX, Amtrak, Conrail’s Corporate Headquarter.

SUBJECT – Application April 25, 2012 – Appeal challenging Department of Buildings’ determination that multiple signs located on railroad properties are subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan @ 167<sup>th</sup> Street, Block 2539, Lot 502. Borough of Bronx.

### COMMUNITY BOARD #4BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

## 182-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC, lessee.

OWNER OF PREMISES – Metropolitan Transportation Authority.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings’ determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway and 161<sup>st</sup> Street. Borough of Bronx.

### COMMUNITY BOARD #4BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 183-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – 476 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 184-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – 477 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 185-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – Department of Ports and Trade.

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – 475 Exterior Street, E. 149<sup>th</sup> Street to North Major Deegan Expressway to East Harlem River to West, Block 02349, Lot 0112, Borough of Bronx.

### COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 186-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 187-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

### COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 188-12-A

APPLICANT – Herrick, Feinstein, LLP by David Feuerstein, Esq. for Clear Channel Outdoor, Inc., lessee.

OWNER OF PREMISES – MTA

SUBJECT – Application June 11, 2012 – Appeal challenging Department of Buildings' determination that a sign located on railroad property is subject to the NYC Zoning Resolution.

PREMISES AFFECTED – Major Deegan Expressway, Borough of Bronx.

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## COMMUNITY BOARD #1BX

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

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## 162-12-A

APPLICANT – Davidoff Hatcher & Citron, LLP, for CBS Outdoor, Inc.

OWNER OF PREMISES: Winston Network, Inc.

SUBJECT – Application May 31, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continue non-conforming use status as advertising sign, pursuant to Z.R. §52-731. R4 zoning district.

PREMISES AFFECTED – 49-21 Astoria Boulevard North, northwest corner of Astoria Boulevard North and Hazen Street, Block 1000, Lot 19, Borough of Queens.

## COMMUNITY BOARD #1Q

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2013, at 10 A.M., for decision, hearing closed.

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## 167-12-A

APPLICANT – Davidoff Hatcher & Citron, LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES: Flash Inn Inc. c/o Danny Miranda

SUBJECT – Application June 7, 2012 – Appeal from Department of Buildings' determination that sign is not entitled to continued non-conforming use status as advertising sign, pursuant to Z.R. §52-731. R7-2 zoning district.

PREMISES AFFECTED – 101-07 Macombs Place, northwest corner of Macombs Place and West 154<sup>th</sup> Street, Block 2040, Lot 23, Borough of Manhattan.

## COMMUNITY BOARD #10M

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2013, at 10 A.M., for decision, hearing closed.

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## 169-12-A & 170-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – 26-28 Market Street, Inc.

SUBJECT – Application June 7, 2012 – Appeal from Department of Buildings' determination that signs are not entitled to continued non-conforming use status as advertising signs, pursuant to Z.R. §52-731. R7-2 zoning district.

PREMISES AFFECTED – 24-28 Market Street, southeast intersection of Market Street and Henry Street, Block 275, Lot 20, Borough of Manhattan.

## COMMUNITY BOARD #3M

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 5, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

## 160-11-BZ

### CEQR #12-BSA-032M

APPLICANT – Slater & Beckerman, LLP for Jewish National Fund, owner.

SUBJECT – Application October 14, 2011 – Variance (§72-21) to allow for the enlargement of a community facility (*Jewish National Fund*), contrary to rear yard (§24-33), rear yard setback (§24-552), lot coverage (§24-11), and height and setback (§§23-633, 24-591) regulations. R8B/LH-1A zoning district.

PREMISES AFFECTED – 42 East 69<sup>th</sup> Street, south side of East 69<sup>th</sup> Street, between Park Avenue and Madison Avenue. Block 1383, Lot 43. Borough of Manhattan.

## COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 7, 2012 citing on Department of Buildings Application No. 120703382, reads in pertinent part:

Proposed construction in the rear yard at the level of the cellar increases degree of existing non-compliance with lot coverage requirements of ZR

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24-11 contrary to ZR 54-31.

Proposed construction in the rear yard at the level of cellar is not a permitted obstruction in required rear yard pursuant to ZR 24-33 and therefore increases degree of existing non-compliance with rear yard requirements of ZR 24-36 contrary to ZR 54-31.

Proposed enlargement increases degree of existing non-compliance with maximum building height limitation of 75 feet of ZR 23-633, rear yard setback requirement of 24-552 and special height limitations of 60 feet of ZR 24-591 in LH-1A District contrary to ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8B zoning district within Limited Height District 1A (LH-1A) and the Upper East Side Historic District, an enlargement to an existing community facility building, which does not comply with lot coverage, rear setback, rear yard, and height regulations contrary to ZR §§ 24-11, 24-33, 24-36, 23-633, 24-552, 24-591, and 54-31; and

WHEREAS, a public hearing was held on this application on October 16, 2012, after due notice by publication in the *City Record*, and then to decision on December 11, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Jewish National Fund (“JNF”), a nonprofit institution; and

WHEREAS, the site is located on the south side of East 69<sup>th</sup> Street, between Park Avenue and Madison Avenue; and

WHEREAS, the site has a width of 50 feet, a depth of 104.5 feet, and a lot area of approximately 5,020 sq. ft.; and

WHEREAS, the site is occupied by a five-story building (the “Main Building”) and a four-story annex (the “Annex”) (together, the “Building”); and

WHEREAS, the Main Building was constructed in 1919-1920 as a single-family home; and

WHEREAS, on October 26, 1954, the Board granted an appeal pursuant to BSA Cal. No. 552-54-A to allow for the Main Building to be occupied by community facility use with certain conditions that did not comply with the Building Code; the applicant represents that the status of the building as non-fireproof construction is the only condition associated with the 1954 grant that is still applicable; and

WHEREAS, on July 24, 1962, the Board granted a variance pursuant to BSA Cal. No. 323-62-BZ to allow for the construction of the Annex, which did not comply with lot coverage regulations; and

WHEREAS, the JNF has occupied the entire building for community facility (Use Group 4) purposes for more than 55 years; and

WHEREAS, the Building has a floor area of approximately 18,153 sq. ft. (3.8 FAR); and

WHEREAS, the building serves as JNF’s headquarters and is occupied by administrative services, and meeting and educational space; and

WHEREAS, the Main Building is occupied by: (1) a lobby, gallery, and boardroom on the first floor; (2) a superintendent’s office on the mezzanine; (3) offices, a gallery, and conference rooms on the second floor; (4) offices and a conference room on the third floor; and (5) offices on the fourth and fifth floors; and

WHEREAS, the Annex is occupied by: (1) offices on the first floor; (2) an office and a conference room on the second floor; and (3) offices on the third and fourth floors; and

WHEREAS, the applicant represents that the building complies with the regulations of the Zoning Resolution with the exception of (1) the rear yard with a depth of 18’-5 ½” (a rear yard with a minimum depth of 30’-0” is required); (2) a building height of 81’-11” (60’-0” is the maximum permitted height); and (3) a lot coverage of 75.5 percent (70 percent lot coverage is the maximum permitted); and

WHEREAS, the Building does not contain a means of egress which complies with current Building Code requirements; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the constraints of the existing Building; and (2) the programmatic needs of the JNF; and

WHEREAS, as to the constraints of the existing building, as noted above, the building was built as a single-family home approximately 90 years ago, but has been operated as a community facility for more than 55 years; and

WHEREAS, the applicant identifies the following goals of the proposal: (1) to create an ADA-accessible means of egress, two new stairwells and an elevator within the existing building; (2) to improve the safety and security; and (3) to update the Building’s infrastructure, including the heating and cooling system; and

WHEREAS, the applicant notes that, due to several existing non-complying conditions, it is unable to feasibly accommodate its needs within an as-of-right building envelope, while complying with all zoning requirements; and

WHEREAS, the applicant proposed to recapture some of the 1,947 sq. ft. of floor area lost as a result of the new means of egress by enclosing the Main Building’s fourth floor at the fifth floor and enclosing the existing light well, adding 922 sq. ft. of floor area; and

WHEREAS, the applicant states that the proposed relocation of floor area will allow JNF to better accommodate its existing workforce; and

WHEREAS, the applicant states that the proposal will also add 281 sq. ft. of floor space in the rear of the cellar, which will enable JNF to locate all of its public service programs in the cellar; and

WHEREAS, the applicant states that the Building’s existing mechanical room space is inadequate to accommodate a new energy-efficient gas-fired chiller/heater required to heat

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and cool the Building; and

WHEREAS, the applicant states that the height of the new mechanical bulkhead will be the same as the existing 81'-11" bulkhead but will occupy an additional 141 sq. ft. of surface area as it will be located in space previously occupied by a skylight; and

WHEREAS, the applicant also proposes to demolish the Annex and rebuild it upon its existing footprint to a height of 37'-8" (4'-1 1/2" lower in height than the existing); and

WHEREAS, the applicant states that the reconstruction of the Annex will align the floor levels with the Main Building and allow it to be ADA-accessible; and

WHEREAS, JNF also proposes to refurbish the façade of the Main Building and upgrade the current mechanical plumbing; and

WHEREAS, the applicant states that the variance is required to address the following conditions (1) the enclosure of the fourth floor roof at the fifth floor will increase the degree of non-compliance with height and rear yard regulations, which require a rear yard set back with a depth of 10'-0"; (2) the height of the new mechanical bulkhead will be the same as the existing bulkhead at 81'-11", but will contain an additional 141 sq. ft. of surface area, thereby increasing the degree of non-compliance with height regulations; and (3) the addition of 281 sq. ft. of space in the cellar will create a vertical penetration in the rear yard of 2'-6", increasing the degree of non-compliance with rear yard and lot coverage regulations; and

WHEREAS, the applicant states that the unique conditions inherent in the site including (1) the functional obsolescence of the Building; (2) the absence of ADA-accessibility; (3) inefficient energy infrastructure; and (4) the adoption of the R8B/LH1-A zoning district regulations which limit the ability to modify the Building; and

WHEREAS, the applicant also asserts that by its variance grant under BSA Cal. No. 323-62-BZ, the Board recognized that the site had unique conditions which create practical difficulties and unnecessary hardship in strictly complying with the bulk regulations of the ZR; and

WHEREAS, the applicant asserts that the obsolescence of the building precludes it from improving and modernizing the Building to include (1) an ADA-accessible means of egress without recapturing the floor area used for the new egress space, by enclosing the fourth floor roof at the fifth floor; (2) maximized security and separation between public and private work space within the building; and (3) a modern energy efficient HVAC system; and

WHEREAS, the applicant states that the Building's current stairs and elevator are not ADA-compliant and that in order to be available to the entire community, it must renovate the Building to contain two means of egress and an elevator which complies with ADA-accessibility requirements; and

WHEREAS, currently, the only means of egress is in the Main Building and it has two steps to enter the building into the main lobby and then another three steps to access the narrow non-ADA compliant elevator; and

WHEREAS, further, the applicant states that the stair

landings of the Main Building and the stair landings of the Annex above the first floor are at different elevations, which requires additional assistance to access the Annex; and

WHEREAS, the applicant states that its many educational and community events are not truly available to those for whom climbing stairs is a problem; and

WHEREAS, the applicant notes that 1,947 sq. ft. of floor area will be lost due to the creation of the new egress; and

WHEREAS, the applicant asserts that the only place within the building envelope to recapture the lost space is at the fourth floor roof at the fifth floor of the Main Building, where the applicant proposes to enclose and recapture 647 sq. ft. of floor area; and

WHEREAS, as to the separation of uses, the applicant states that the United States Department of Homeland Security has identified JNF as a potential target of terrorist organizations and has issued grants for security cameras and blast mitigation for windows; JNF further seeks to secure the Building by limiting the public's access to the Building to the cellar and not to allow access to the upper floors; and

WHEREAS, in order to accomplish this goal, the applicant states that it must make the rear yard ADA-accessible from the cellar, which requires that the roof of the cellar at the rear of the Main Building be vertically extended 2'-6" into the rear yard, thus creating a new non-compliance with an obstruction of that height in the required rear yard; and

WHEREAS, the applicant represents that the Building's existing mechanical room space is inadequate to accommodate the installation of a new energy efficient gas fired chiller/heater equipment required to heat and cool the Building and that a new larger mechanical bulkhead must be constructed; and

WHEREAS, the applicant states that the height of the new mechanical bulkhead will match the height of the existing bulkhead at 81'-11", but there will be an increase in the surface area of the bulkhead from 187 sq. ft. to 328 sq. ft. by incorporating a space previously occupied by an existing skylight; and

WHEREAS, the applicant states that a variance is required because the increase in surface area will increase the degree of non-compliance with height regulations; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the Building, when considered in conjunction with the programmatic needs of JNF, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the JNF is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

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WHEREAS, the applicant states that the surrounding area is primarily characterized by schools, offices, and multiple dwelling buildings, with many buildings occupied by ground floor retail use; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission, dated November 19, 2012, granting its approval for the proposal; and

WHEREAS, the applicant states that since 1951, JNF has occupied the site with Use Group 4 community facility use within its national headquarters and JNF does not propose to change its longstanding conforming use at the site; and

WHEREAS, as to the height, the applicant states that the proposed enclosure of the fourth floor roof at the fifth floor will align with the rear wall of the Main Building; the enlargement of the cellar will result in a vertical obstruction in the required rear yard only to a height of 2'-6"; and the mechanical room will be at the same height and will only be 141 sq. ft. larger than the existing mechanical room; and

WHEREAS, the applicant notes that the increase in lot coverage is limited to the vertical elevation of the cellar and will not be visible from the street; and

WHEREAS, the applicant notes that the surrounding rear yard conditions include one open rear yard, one building without lot line windows, but built to the property line, and one site with a shed located in the rear yard; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no complying development that would meet the programmatic needs of the JNF could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum necessary to accommodate the current and projected programmatic needs; and

WHEREAS, the Board notes that the applicant will locate the majority of the enlargement within the existing building envelope so as to minimize any impact; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the JNF to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified a Type I action pursuant to Sections 617.5(c) of 6 NYCRR; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 12BSA032M,

dated October 7, 2011; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a negative declaration determination, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8B zoning district within Limited Height District 1A and the Upper East Side Historic District, an enlargement to an existing community facility building, which does not comply with lot coverage, rear setback, rear yard, and height regulations contrary to ZR §§ 24-11, 24-33, 24-36, 23,633, 24-552, 24-591, and 54-31, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2012"—sixteen (16) sheets; and *on further condition*:

THAT the proposal will be constructed in accordance with the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall proceed in accordance with ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

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**104-12-BZ**  
**CEQR #12-BSA-117Q**

APPLICANT – Sheldon Lobel, P.C., for Paula Jacob, owner.

SUBJECT – Application April 12, 2012 – Re-instatement (§11-411) of a previously approved variance which expired on May 20, 2000 which permitted accessory retail parking on the R5 portion of a zoning lot; Extension of Time to obtain a Certificate of Occupancy which expired on April 11, 1994; Waiver of the Rules. C2-4/R6A and R5 zoning district.

PREMISES AFFECTED – 178-21 & 179-19 Hillside Avenue, northside of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, Block 9937, Lot 60, Borough of Queens.

**COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a reopening, a reinstatement of a prior Board approval for accessory retail parking lot on the residential portion of a zoning lot split by district boundaries, pursuant to ZR § 11-411, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, with continued hearings on September 25, 2012 and October 30, 2012, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the premises is located on the north side of Hillside Avenue between 178<sup>th</sup> Street and Midland Parkway, partially within a C2-4 (R6A) zoning district and partially within an R5 zoning district; and

WHEREAS, the site has 230 feet of frontage along Hillside Avenue, a maximum lot depth of 144 feet, and a total lot area of 31,651 sq. ft.; and

WHEREAS, the majority of the site is located within the C2-4 (R6A) zoning district, which runs parallel to Hillside Avenue for a depth of 100 feet, and the rear portion of the site is within the R5 zoning district; and

WHEREAS, the site consists of a one-story commercial retail building currently divided into ten separate stores, with a commercial parking lot with 40 parking spaces at the rear of the building in the R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 24, 1951 when, under BSA Cal. No. 821-50-BZ, the Board granted a variance to permit accessory commercial parking in the residential portion of the lot, for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, on December 11, 1990, the Board granted a ten-year extension of term, which expired on May 20, 2000; and

WHEREAS, most recently, on April 19, 1994, the Board granted an extension of time to obtain a certificate of occupancy, which expired on April 11, 1995; and

WHEREAS, the term of the variance has not been extended since its expiration on May 20, 2000; and

WHEREAS, the applicant represents, however, that the use of the residential portion of the parking lot for accessory commercial parking was continuous since the time of the initial grant; and

WHEREAS, accordingly, the applicant now proposes to reinstate the prior grant; and

WHEREAS, pursuant to ZR § 11-411, the Board may

extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about the maintenance of the site and the compliance of the signage with underlying district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti on the rear retaining wall has been painted over, opaque screening has been installed on the chain-link fence adjoining the residential property to the rear of the site, and a new drainage system has been installed for the parking lot; and

WHEREAS, the applicant also submitted a revised site plan reflecting a new parking lot striping plan which provides additional space for maneuverability, creates a space for the placement of the site's refuse containers, and reduces the number of parking spaces on the site from 40 to 31; and

WHEREAS, the applicant also submitted a signage chart reflecting that the signage on eight of the building's ten storefronts comply with the underlying signage regulations, and of the remaining two retail businesses one recently vacated the building and the applicant will have the signage removed, and the owner is working with the final business to reduce the size of its existing sign or obtain a new sign that complies with district regulations; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 11-411 to permit, partially within a C2-4 (R6A) zoning district and partially within an R5 zoning district, the reinstatement of a prior Board approval for accessory retail parking lot on the residential portion of a zoning lot split by district boundaries, for a term of ten years from the date of this grant, to expire on December 11, 2022, and an extension of time to obtain a certificate of occupancy to December 11, 2013; *on condition* that any and all work will substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 5, 2012"-(1) sheet and "Received December 11, 2012"-(1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on December 11, 2022;

THAT all signage will comply with C2 district regulations;

THAT the above conditions will be listed on the certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 11, 2013;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

(DOB Application No. 6463/1950)

Adopted by the Board of Standards and Appeals, December 11, 2012.

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## 112-12-BZ

### CEQR #12-BSA-122R

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Raymond B. and Colleen Olsen, owners.

SUBJECT – Application April 23, 2012 – Special Permit (§73-621) for the enlargement of an existing one-family dwelling, contrary to open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 244 Demorest Avenue, southwest corner of intersection of Demorest Avenue and Leonard Avenue, Block 444, Lot 15, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 29, 2012, acting on Department of Buildings Application No. 5200874847, reads in pertinent part:

Proposed enlargement for one family in an R2 zoning district will result in decreasing the required open space ratio as per ZR 23-141; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, in an R2 zoning district, the proposed enlargement to a single-family home, which does not comply with the zoning requirement for open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on October 30, 2012 after due notice by publication in *The City Record*, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 14, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Demorest Avenue and Leonard Avenue,

within an R2 zoning district; and

WHEREAS, the subject site has 40 feet of frontage along Demorest Avenue, 75 feet of frontage along Leonard Avenue, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the site is occupied by a one-story single-family home with a floor area of 1,078 sq. ft. (0.36 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 1,078 sq. ft. (0.36 FAR) to 1,423 sq. ft. (0.47 FAR); the maximum floor area permitted is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 135 percent (150 percent is the minimum required); and

WHEREAS, as a threshold matter, in R1-2 zoning districts, ZR § 73-621 is only available to enlarge homes that existed on December 15, 1961; and

WHEREAS, in support of the finding that the subject home was constructed prior to December 15, 1961, the applicant submitted a certificate of occupancy for the home issued on October 27, 1960; and

WHEREAS, the Board has reviewed the evidence and accepts that the home existed in its pre-enlarged state prior to December 15, 1961; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant submitted plans reflecting that the proposed reduction in the open space ratio results in an open space ratio that is 90 percent of the minimum required; and

WHEREAS, as to the lot coverage and floor area ratio, the applicant notes that the proposed home's lot coverage and floor area ratio will comply with the underlying R2 district regulations; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that



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the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for open space ratio, contrary to ZR § 23-141; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received September 29, 2012"–(8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 1,423 sq. ft. (0.47 FAR) and a minimum open space ratio of 135 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

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## 137-12-BZ

### CEQR #12-BSA-126M

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Haug Properties, LLC, owner; HSS Properties Corporation, lessee.

SUBJECT – Application April 27, 2012 – Variance (§72-21) to allow for an ambulatory diagnostic and treatment health care facility (*Hospital for Special Surgery*), contrary to rear yard equivalent, use, height and setback, floor area, and parking spaces (§§42-12, 43-122, 43-23, 43-28, 43-44, and 13-133) regulations. M1-4/M3-2 zoning districts.

PREMISES AFFECTED – 515-523 East 73<sup>rd</sup> Street, Block 1485, Lot 11, 14, 40, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 28, 2012, acting on Department of Buildings Application No. 120969639, reads in pertinent part:

1. Proposed floor area ratio for a community facility in M1-4 zoning district portion of the lot exceeds 6.5 FAR and is contrary to ZR 43-122. The community facility use does not have a maximum FAR in M3-2 portion of the lot.
2. The proposed ambulatory diagnostic or treatment health care facility located in M3-2 zoning portion of the lot is not a permitted use as per ZR 42-12 (for the zoning lot not existing prior to 1961).
3. Proposed structure 75 feet in height, along the street line of East 73<sup>rd</sup> Street is not a permitted obstruction in the rear yard equivalent, contrary to ZR 43-28(b) and ZR 43-23(b).
4. Proposed 75 feet in height structure, along the street line of East 73<sup>rd</sup> Street is not permitted in the Depth of Optional Front Open Area of 15 feet, for the alternate front setback, as per ZR 43-44.
5. Proposed accessory parking for the community facility in Community Board No. 8 in Manhattan exceeds 1 space per 4,000 square feet of floor area, and is contrary to ZR 13-133; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an M1-4 zoning district and partially within an M3-2 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, parking, and use, contrary to ZR §§ 42-12, 43-122, 43-23, 43-28, 43-44, and 13-133; and

WHEREAS, a public hearing was held on this application on September 25, 2012, after due notice by publication in the *City Record*, and then to decision on December 11, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, an adjacent neighbor provided testimony citing concerns about the potential impacts of traffic and construction on the site and the surrounding area; and

WHEREAS, the application is brought on behalf of the Hospital for Special Surgery (the "Hospital"), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject zoning lot is located on the a through block with frontage on East 73<sup>rd</sup> Street and East 74<sup>th</sup>

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Street, between the FDR Drive and York Avenue; and

WHEREAS, the zoning lot has a lot area of 20,434 sq. ft., of which 19,863 square feet is located in an M1-4 zoning district and a sliver of 571 square feet (5.59 feet in width by 102.17 feet in depth) is located in an M3-2 zoning district; and

WHEREAS, the site is an irregular Z-shaped lot that consists of a through lot portion in the center and one small interior lot portion on each street frontage; the through lot portion measures 75 feet in width by 204 feet in depth, the East 73rd Street interior lot, to the east of the through lot portion, measures 25 feet in width by 102 feet in depth, and the East 74th Street interior lot, to the west of the through lot portion, also measures 25 feet in width by 102 feet in depth; and

WHEREAS, there are currently three buildings on the site: a one-story building at 515-521 East 73<sup>rd</sup> Street, a two-story building at 512-518 East 74<sup>th</sup> Street, and a three-story building at 523 East 73<sup>rd</sup> Street; 512-518 East 74<sup>th</sup> Street/517-519 East 73<sup>rd</sup> Street is currently occupied by an automotive repair garage; 523 East 73<sup>rd</sup> Street is occupied by an orthopedic rehabilitation device company; the existing buildings will be demolished to allow for the construction of the proposed ambulatory care facility; and

WHEREAS, the proposed building is 13 stories (including rooftop mechanical floor), with a total floor area of 163,472 sq. ft., a street wall height of 60 feet along East 73rd Street and 131.5 feet along East 74th Street, and a total height of 185.5 feet (including a rooftop mechanical floor of 18 feet in height); and

WHEREAS, the applicant proposes the following uses: (1) the cellar level will be occupied by 98 accessory off-street parking; (2) the first floor will be occupied by the building entrance and main lobby and a through-block drive lane to allow drop-off and pick-up of patients, two loading berths to the west of the drive-through lane, and bulk oxygen storage to the east of the drive-through lane; (3) the second floor will be occupied by the post-anesthesia care unit along with a visitor waiting area; (4) floors three through five will be occupied by the operating floors, with six operating rooms per floor with ancillary facilities including pre-operative holding, orthopedic surgical equipment staging, support areas for doctors to perform post-surgery patient follow-up, and family waiting areas; (5) the sixth floor will be occupied by the building's sterilization facilities, as well as staff lockers and break areas; (6) the seventh floor will be occupied by mechanical and building support facilities; (7) the eighth floor will be occupied by MRI and X-Ray facilities, ten examination rooms, five physician office suites, and the proposed new teaching center; (8) the ninth floor will be occupied by rehabilitation, sports medicine, and occupational therapy departments; (9) the tenth through twelfth floors will be occupied by additional X-Ray facilities as well as physicians' offices; and (10) the thirteenth floor will be occupied by mechanical systems; and

WHEREAS, the applicant states that the proposed building will have the following non-compliances and non-conformance: (1) a floor area of 163,472 sq. ft. (8.00 FAR)

(129,110 sq. ft. and an FAR of 6.5 are the maximum permitted); (2) one rear yard equivalent with a depth of 20 feet along East 74<sup>th</sup> Street (two open areas with depths of 20 feet each or one open area with a depth of 40 feet is required); (3) on the East 73<sup>rd</sup> Street frontage, a setback with a depth of five feet is provided above the fifth floor (a setback of 15 feet is required along the frontage); (4) 98 parking spaces (a maximum of 41 parking spaces is permitted); and (5) Use Group 4 hospital use within the 571 sq. ft. of lot area in the M3-2 zoning district (Use Group 4 hospital use is not permitted within the M3-2 zoning district); and

WHEREAS, because the proposed building does not comply with the underlying zoning district regulations, the subject variance is requested; and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site's irregular shape; (2) the high water table; (3) subsurface contamination; (4) the presence of bedrock close to the surface; and (5) the programmatic needs of Hospital; and

WHEREAS, the applicant states that the site is an irregular Z-shaped lot, which creates a hardship in accommodating the most efficient floor plates; and

WHEREAS, specifically, given the irregular shape, contiguous floor plates are limited to the through-block portion of the lot that is only 75 feet in width and pushing the floor plate back another 20 feet to have a rear yard equivalent and street line setback, given the physical condition of the lot, would make it impossible to accommodate the minimum of six operating rooms per floor, together with the required medical equipment staging areas and surgery support areas, that are necessary to meet the Hospital's programmatic needs; and

WHEREAS, the applicant represents that the irregular shape constrains the floorplates, which would be even further constrained if the required yards and setbacks were provided at both frontages; and

WHEREAS, the applicant represents that the subsurface conditions contribute to the practical difficulties and unnecessary hardship as the Hospital initially explored the construction of three full floors below grade to benefit from the exemption of cellar space from floor area calculations; the location of three floors below grade would have resulted in a building complying with the applicable floor area regulations; and

WHEREAS, the applicant states that due to the conditions outlined in its geotechnical report, it is not feasible to construct more than one level below grade due to the presence of groundwater beginning at approximately eight feet below grade in certain areas of the site and that such groundwater is known to be contaminated; and

WHEREAS, the applicant represents that any excavation to a level below the groundwater level requires dewatering of the site (i.e. pumping and disposal of the groundwater) as well as measures to protect the new development from water infiltration; and

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WHEREAS, further, with respect to dewatering, if groundwater is contaminated it must be treated prior to disposal, while uncontaminated groundwater can be pumped into municipal drainage systems, which results in additional expense; and

WHEREAS, further, the applicant states that there are underground fuel storage tanks at the Department of Sanitation property directly to the east of the site, and long-term leakage from such tanks may have caused groundwater contamination and additional contamination has been found at the Con Edison facility to the north of the site that may similarly have caused groundwater contamination; and

WHEREAS, the applicant states that a Phase II Subsurface Investigation confirms the presence of contaminants in groundwater samples taken from the site; and

WHEREAS, the applicant states that the single cellar level that is proposed will extend 14 feet below grade; because this is below the presence of groundwater, costly dewatering and decontamination measures will be required even for the single cellar level but, far less costly than to excavate further to allow for additional cellar levels, as originally considered; and

WHEREAS, the applicant notes that in addition to the need for dewatering, any below-grade levels will need to be waterproofed; and

WHEREAS, as to the bedrock, the applicant states that it is encountered as high as one foot below grade, with rock quantity increasing in depth, therefore construction of below grade levels requires substantial excavation; and

WHEREAS, the applicant notes that the proposed single cellar level would require excavation of a variety of materials, including fill, till, decomposed rock, and bedrock; further, the additional two below-grade levels that were initially considered would be located predominantly in bedrock, therefore substantial blasting would be required in order to construct the two additional below-grade levels that were initially considered; and

WHEREAS, the applicant represents that the intensive excavation (including drilling, chipping, hoe-ramming, and/or blasting) and associated shoring and foundation work required for such additional below-grade levels would substantially increase development costs for the and would not be financially feasible; and

WHEREAS, as to the Hospital's programmatic needs, as an academic medical center, it seeks a minimally efficient critical mass of operating rooms on each floor along with certain other critical functions that can only be accommodated in the proposed building; and

WHEREAS, the applicant requires uniform floorplates for efficiency in construction design and in use of the building; and

WHEREAS, the applicant states that these other critical needs include the following: (1) training facilities in the form of dedicated space for learning within the ambulatory care facility; (2) physician's offices to maximize physicians' efficiency and ability to offer care including

patient evaluation, surgery, research, and teaching; (3) diagnostic services which allow the opportunity to diagnose (through X-ray or MRI) in the same facility where the patient's doctor is located; (4) rehabilitation services for post-surgery intensive physical therapy programs; and (5) parking to help serve a patient population with mobility limitations and their family and caregivers; and

WHEREAS, the Board finds that the Hospital is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, furthermore, the Board finds that notwithstanding the Hospital's ability to rely on programmatic needs to satisfy the findings under ZR § 72-21(a), the applicant has provided sufficient evidence to establish that there are unique physical conditions on the site to justify the requested zoning relief; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique physical conditions on the site, when considered in conjunction with the programmatic needs of the Hospital, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the applicant is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that the site is located in an M1-4 manufacturing zoning district between an R10 high density residential zoning district and an M3-2 heavy manufacturing district and that like the mix of residential and manufacturing zoning, the uses in the area are mixed between institutional, commercial, industrial and residential uses, with a large concentration of medical uses similar to the proposed ambulatory care facility; and

WHEREAS, the applicant asserts that the proposed hospital is consistent with the concentration of medical facilities in the surrounding area and complements the essential character of the neighborhood; and

WHEREAS, the applicant notes that the site is located between one and two blocks from the Hospital's existing medical facilities in the area, including the main hospital, the Caspary Research Building, the Belaire Building, and the

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Dana Center; and

WHEREAS, the applicant notes that additional medical facilities in the area include New York-Presbyterian Hospital on East 69<sup>th</sup> Street between First Avenue and York Avenue, Memorial Sloan-Kettering Hospital on York Avenue between East 67<sup>th</sup> and East 68<sup>th</sup> Streets, Memorial Sloan-Kettering Integrative Medicine Outpatient Center on First Avenue between East 74<sup>th</sup> and East 75<sup>th</sup> Streets, Gracie Square Hospital located on East 76<sup>th</sup> Street between First Avenue and York Avenue, and Rockefeller University Hospital on York Avenue between East 65<sup>th</sup> and East 66<sup>th</sup> Streets; and

WHEREAS, the applicant asserts that the design of the proposed building is consistent with the urban design of the surrounding area, which contains buildings that rise without setbacks, forming consistent street walls on the side streets, and the material of the building will be consistent with the more contemporary buildings in the area which are clad in metal and glass curtain walls; and

WHEREAS, the applicant states that the proposed building will not impair the use of immediately adjacent properties as in the M3-2 district, a new institutional facility is anticipated to be developed on the vacant DSNY property directly east of the site and a large Con Edison facility occupies the majority of the block directly to the north; and

WHEREAS, the applicant asserts that the adjacent residential building, catering facility, and nursery school are currently adjacent to an active through-block automotive repair shop, with vehicles frequently double-parked in the street and noises and fumes associated with automotive repair shops and that the proposed building, with a through block drop-off area and below grade parking will be consistent with current uses of adjacent properties and will not impair the use or development of such properties; and

WHEREAS, the applicant notes that other uses in the building two residential towers of 38 stories (River Terrace) and 50 stories (East River Place); and

WHEREAS, the applicant states that by providing a through-block drive lane and on-site parking, particularly important for mobility-impaired patients, the Hospital will also take its traffic onto its site and away from the surrounding streets; and

WHEREAS, an adjacent neighbor made the following requests for the proposal: (1) that a third car lane be provided; (2) that a second car lift be provided to facilitate the flow of traffic into the parking garage; and (3) that the applicant hire an independent architect or engineer to review the construction and logistics and to ensure protection of the adjacent building; and

WHEREAS, in response, the applicant states that it has designed the site with a through-block roadway with a width of 24-feet so that patients can be exit and enter cars off of the street and out of the way of traffic; further, a nine-space lay-by is provided to address any overflow during peak hours; and

WHEREAS, further, the applicant states that the traffic flow has been carefully considered and the roadway and parking facility have been designed conservatively to

accommodate a vehicle volume in excess of the projected peak demand; and

WHEREAS, as to construction safety, the applicant states that it is subject to DOB, DEP, and DOT review and approval and will comply with all construction requirements prior to and during construction; and

WHEREAS, the applicant notes that it is constructing a shallow one-level foundation which will be less likely to disturb adjacent sites than would the deeper foundation associated with an as-of-right building; and

WHEREAS, the applicant states that it will remain in communication with its neighbor regarding its construction status and allow for review of its plans; and

WHEREAS, the Board agrees that the applicant's traffic and parking plan will promote the goal of removing stopped cars from the public streets and that there is not a need to hire an independent architect or engineer to review the construction given that the applicant is required to comply with all DOB, DEP, and DOT regulations; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of Hospital could occur on the existing site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the applicant asserts that the proposed floor plates are of the minimum size to accommodate the six operating rooms per floor that are needed to meet the Hospital's programmatic needs for efficient and cost-effective surgery floors and that any less than six operating rooms per floor would result in tremendous inefficiency and an increase in the cost of patient care; and

WHEREAS, additionally, the applicant notes that the amount of floor area proposed is the minimum necessary to provide an integrated ambulatory care facility providing a continuum of care and training while meeting the growing demand for the Hospital's services; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Hospital to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental

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review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 12BSA126M, dated December 10, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the July 2012 Remedial Action Plan site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant’s stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment;

WHEREAS, based upon the above, the Board finds that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site partially within an M1-4 zoning district and partially within an M3-2 zoning district, the construction of a new community facility building that does not comply with zoning regulations for floor area, rear yard, height and setback, parking, and use, contrary to ZR §§ 42-12, 43-122, 43-23, 43-28, 43-44, and 13-133, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked

‘Received December 12, 2012’– twenty-five (25) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 163,472 sq. ft. (8.0 FAR), setbacks as reflected, and a maximum of 98 parking spaces, in accordance with the BSA-approved plans;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with DEP’s approval of the Remedial Closure Report;

THAT substantial construction will be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

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## **154-12-BZ CEQR #12-BSA-136K**

APPLICANT – Law Office of Fredrick A. Becker, for Caroline Teitelbaum and Joshua Teitelbaum, owners.

SUBJECT – Application May 11, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1202 East 22<sup>nd</sup> Street, west side of East 22<sup>nd</sup> Street between Avenue K and Avenue L, Block 7621, Lot 59, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 24, 2012, acting on Department of Buildings Application No. 320297282, reads in pertinent part:

Proposed floor area contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-141.

Proposed side yard is contrary to ZR 23-461(a).

Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-

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141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, and then to decision on December 11, 2012; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,885.25 sq. ft. (0.47 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from 1,885.25 sq. ft. (0.47 FAR) to 4,099.62 sq. ft. (1.03 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 55.3 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a minimum width of 3'-6 1/4" and to provide a side yard along the northern lot line with a width of 7'-0" (two side yards with minimum widths of 5'-0" each and a total width of 13'-0" are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant submitted a survey of other legal homes in the surrounding area with FARs greater than 1.0; and

WHEREAS, the survey reflects that within one block of either side of the site there are at least ten homes with FARs greater than 1.0, and at least eight homes with FARs of 1.03 or greater; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is

outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 24, 2012"-(8) sheets and "November 27, 2012"-(3) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,099.62 sq. ft. (1.03 FAR); a minimum open space ratio of 55.3 percent; side yard along the southern lot line with a minimum width of 3'-6 1/4" and a side yard along the northern lot line with a width of 7'-0"; and a rear yard with a minimum depth of 22'-0", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT the approved plans will be considered approved only for the portions related to the specific relief granted;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

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## **163-12-BZ CEQR #12-BSA-141M**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospitals Center, owner; New York University, lessee.  
SUBJECT – Application May 31, 2012 – Variance (§72-21) to permit the development of a new biomedical research facility on the main campus of the NYU Langone Medical Center, contrary to rear yard equivalent, height, lot coverage, and tower coverage (§§24-382, 24-522, 24-11, 24-54) regulations. R8 zoning district.

PREMISES AFFECTED – 435 East 30<sup>th</sup> Street, East 34<sup>th</sup> Street, Franklin D. Roosevelt (FDR) Drive Service Road, East 30<sup>th</sup> Street and First Avenue, Block 962, Lot 80, 108,

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1001-1107, Borough of Manhattan.

## COMMUNITY BOARD #6M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 24, 2012, acting on Department of Buildings Application No. 121183432, reads in pertinent part:

1. Proposed building portion is located within the required rear yard equivalent; contrary to ZR 24-382.
2. Proposed building portion located within the initial setback distance exceeds the maximum permitted height of 85 feet above curb level and also penetrates the sky exposure plane; contrary to ZR 24-522.
3. The proposed total lot coverage within the interior and through lot portions of zoning lot exceeds 65 percent; contrary to ZR 24-11.
4. The proposed building increases the degree of non-compliance allowed by prior BSA variance (Cal. No. 186-10-BZ) with respect to tower coverage limitation; contrary to ZR 24-54 and 186-10-BZ; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the construction of a new biomedical research facility on the main campus of the New York University Langone Medical Center (the “Medical Center”) that does not comply with zoning regulations for rear yard equivalent, height and setback, lot coverage, and tower coverage, contrary to ZR §§ 24-382, 24-522, 24-11, and 24-54; and

WHEREAS, a public hearing was held on this application on August 4, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 30, 2012 and then to decision on December 11, 2012; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Hinkson; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the application is brought on behalf of the Medical Center, a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34<sup>th</sup> Street to the north, the Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30<sup>th</sup> Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, on November 20, 2001, the Board granted

a special permit pursuant to ZR § 73-64 to allow the construction of a new medical research and laboratory building (Use Group 3A) on the site, contrary to zoning regulations for height and setback, rear yard, and minimum distance between buildings; and

WHEREAS, on July 13, 2010, under BSA Cal. No. 41-10-BZ, the Board granted a variance to permit the renovation and enlargement of the existing Emergency Department and the addition of 354 sq. ft. of signage at the entrances and on the façade of the Emergency Department, contrary to zoning regulations for rear yard and signage; and

WHEREAS, most recently, on March 15, 2011, the Board granted a variance to permit the construction of two new community facility buildings, contrary to zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements; and

WHEREAS, the applicant notes that the zoning lot is subject to a 1949 indenture between the City and New York University (“NYU”), pursuant to which portions of East 31<sup>st</sup> Street, East 32<sup>nd</sup> Street and East 33<sup>rd</sup> Street were demapped and their beds conveyed to NYU, and the portion of East 30<sup>th</sup> Street abutting the southern end of the superblock was also demapped and an access easement thereover granted to NYU; the indenture also requires that no building on the zoning lot have a height greater than 25 stories, that lot coverage on the zoning lot not exceed 65 percent, and that at least 235 parking spaces be provided on the zoning lot; and

WHEREAS, the proposed construction would be located on the southeast portion of the zoning lot, bounded by East 30<sup>th</sup> Street to the south, the FDR Drive Service Road to the east, the Smilow Research Center building to the north, and the Schwartz Lecture Hall to the west (the “Development Site”); and

WHEREAS, the Development Site is currently occupied by the 15-story Rubin Hall, a one-story portion of Schwartz Lecture Hall, and a two-story portion of the Medical Science Building, which are proposed to be demolished; and

WHEREAS, the applicant notes that Rubin Hall is currently vacant and abatement and demolition of that building have already begun independent of the development of the proposed building; and

WHEREAS, the applicant proposes to construct a 16-story biomedical research facility building with a floor area of 296,776 sq. ft. (the “Science Building”); and

WHEREAS, the applicant states that the construction of the Science Building will result in a total floor area for the zoning lot of 2,650,003 sq. ft. (6.5 FAR); the maximum permitted floor area for a community facility in the subject zoning district is 2,650,322 sq. ft. (6.5 FAR); and

WHEREAS, the proposed construction will create the following non-compliances on the site: a small amount of the northeast portion of the Science Building is located within the required rear yard equivalent (a rear yard equivalent with a minimum depth of 60’-0” is required); the front wall of the Science Building fronting on the FDR Drive Service Road has

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a height of approximately 281'-0", and pierces the sky exposure plane (a minimum front wall setback of 15'-0" is required above the height of 85'-0" or nine stories); a lot coverage of 258,962 sq. ft. (66 percent) and a temporary lot coverage of 260,883 sq. ft. (66.5 percent) attributable to the Medical Center's existing loading berths on former East 30<sup>th</sup> Street, which would not be demolished until after the Science Building is completed (the maximum permitted lot coverage for interior and through lots is 65 percent); and an increase in the degree of non-compliance of the tower coverage of the zoning lot's previously approved towers; and

WHEREAS, because the Science Building does not comply with the underlying zoning district regulations, the applicant seeks the proposed variance; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Medical Center: (1) additional up-to-date laboratory space to accommodate the Medical Center's growing research program; (2) floor plates that are sized and configured for efficient and collaborative research; and (3) functional integration of such space with the Medical Center's existing scientific research facilities; and

WHEREAS, the applicant states that the Medical Center has a programmatic need for additional laboratory space that is optimally configured for efficient and collaborative research and physically and functionally integrated with the Medical Center's existing science research facilities; and

WHEREAS, the applicant submitted a letter from the Medical Center in support of its need for additional research space, which states that the Medical Center's guiding principle of translational medicine requires that its campus have a sufficient amount of up-to-date research space so that its clinical services can continue to be informed by, and its educational programs involved in, scientific advancements; and

WHEREAS, the applicant states that as the Medical Center enhances its clinical and educational programs, it must ensure that its research program is likewise supported by an adequate amount of research space and state-of-the-art facilities; and

WHEREAS, the applicant further states that increasing research and funding activity at the Medical Center also make it crucial for the Medical Center to have sufficient up-to-date research facilities for attracting talent and investment; and

WHEREAS, specifically, the applicant states that the Medical Center's research expenditures have increased by 46 percent over the past five years, with \$255 million in expenditures in 2011, and are expected to increase to approximately \$340 million in 2015 and \$460 million in 2020, with corresponding increases in the number of principal investigators and lab staff; and

WHEREAS, the applicant notes that the Medical Center has leased space in East River Science Park, located on the south side of East 29<sup>th</sup> Street to the east of First Avenue, and on Varick Street to help satisfy the demand for

research space, but additional on-campus space, integrated with existing Medical Center buildings, is also needed; and

WHEREAS, the applicant represents that, to support the current and projected research activity on campus, the Medical Center needs approximately 350,000 net assignable sq. ft. of new research space, of which 236,000 net assignable sq. ft. would be dedicated to wet bench space; and

WHEREAS, the applicant states that the Science Building would provide approximately 296,776 sq. ft. of total floor area, with approximately 256,000 sq. ft. of floor area, amounting to approximately 186,000 net assignable sq. ft., dedicated to research laboratories and related core labs on the second through 13<sup>th</sup> floors of the building, bringing the Medical Center significantly closer to attaining its long-term goal; and

WHEREAS, the applicant further states that the multiple conference rooms and multipurpose spaces located on the basement and first floors would facilitate collaborative communications among researchers and thereby foster increased discovery, revenue, and growth for the Medical Center; and

WHEREAS, the applicant states that the Medical Center also has a programmatic need for its new research space to be accommodated on floor plates that are efficient in size and configuration; and

WHEREAS, the applicant notes that the prototypical laboratory floor plate is a systematically repetitive "laboratory module" including open lab benches, lab support spaces, offices, and office support space such as administrative facilities and shared amenities, which results in a flexible, adaptable, and functionally efficient research environment; and

WHEREAS, the applicant states that the floor plates must also be large enough to accommodate a "crucial mass" of principal investigators needed to facilitate collaborative research, and that leading laboratory design consultants have established a standard of eight to 12 principal investigators per floor for this purpose, with a range of 1,400 to 1,700 net assignable sq. ft. per principal investigator; and

WHEREAS, the applicant notes that the laboratory floors of the Science Building would have a width of approximately 275 feet and a depth of approximately 89 feet, so as to provide a flexible, adaptable, and functionally efficient research environment with slightly more than 15,500 net assignable sq. ft. of research space (approximately 22,000 gross sq. ft.) to accommodate nine to ten principal investigators on each floor; and

WHEREAS, the applicant represents that, to further the principle of translational medicine, the new research facilities must relate physically and functionally to the Medical Center's educational and clinical facilities; and

WHEREAS, specifically, the applicant states that there must be physical connections between the new research facilities and the existing Berg Institute, the Medical Science Building, and the Smilow Research Center, with an ability to efficiently share core research facilities, as well as links



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from such spaces to the Medical Center's educational and clinical facilities; and

WHEREAS, specifically, the applicant states that the Science Building would connect with the Berg Institute and the Medical Science Building on the cellar, basement, and first floors, with possible connections on the lower laboratory floors above, allowing for contiguities of the buildings' research support spaces and shared access to the buildings' conference facilities and amenity spaces; and

WHEREAS, the applicant further states that the Science Building would connect to the immediately adjacent Smilow Research Center by an exterior pedestrian path across a shared courtyard, completing an efficient circulation network among the Science Building, the Smilow Research Center, the Berg Institute, and the Medical Science Building, and that this circulation network would serve as an extension of the existing Medical Center buildings, providing Medical Center physicians, researchers, staff, and students with access to the research facilities and amenity spaces located at the southern end of the campus; and

WHEREAS, the applicant represents that an on-campus location is critical for the significant percentage of MD/PhD researchers who maintain clinical practices on the main campus, while a location at the southern end of the zoning lot, in particular, also capitalizes on the campus' proximity to the research buildings at East River Science Park, reinforcing the synergistic relationship among the institutions and commercial laboratories comprising the First Avenue biomedical corridor; and

WHEREAS, the applicant submitted plans for a complying scenario consisting of a four-story building with 80,860 sq. ft. of floor area, of which 39,500 net assignable sq. ft. (52,775 gross sq. ft.) would be dedicated to research space; and

WHEREAS, the applicant represents that the aforementioned programmatic needs could not be satisfied through the complying scenario; and

WHEREAS, specifically, the applicant states that the complying building would contain only four above-grade floors so as not to exceed the height threshold for tower coverage; and

WHEREAS, the applicant further states that to maximize the amount of research space within this limited building envelope, certain space on the basement floor which would otherwise be used for conference facilities and multipurpose spaces would instead be dedicated to shared research cores; however, even with this programming sacrifice, the complying building would fall well short of the 236,000 net assignable sq. ft. needed by the Medical Center and the 186,000 net assignable sq. ft. provided by the proposed Science Building; and

WHEREAS, the applicant states that, in order to comply with lot coverage, rear yard equivalent, and height and setback regulations, while maintaining physical connections to adjacent research facilities, the portion of the complying building located above the basement level would not extend as far to the east and northeast as that of the

Science Building, resulting in smaller floor plates with fewer bench modules, procedure rooms, alcoves, researcher offices, and corresponding office support space, and capable of accommodating two to three fewer principal investigators per floor; and

WHEREAS, the applicant represents that, to maximize the amount of research space within the complying building's limited building envelope, all floors above the basement would be dedicated to laboratory facilities and would be designed with centralized vertical circulation to minimize the circulation distances within the floor plate; however, because this plan arrangement is not conducive to connections between the complying building, the Berg Institute, and the Medical Science Building, such connections would be limited to the cellar and basement floors; and

WHEREAS, the Board acknowledges that the Medical Center, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, in addition to the programmatic needs of the Medical Center, the applicant states that the variance request is also necessitated by unique conditions of the site that create a hardship, specifically: the existing built conditions of the zoning lot; and

WHEREAS, as to the surrounding conditions on the zoning lot, the applicant states that the configuration of the Development Site is dictated by the location of existing buildings on the zoning lot which are integral to the Medical Center's mission and cannot be demolished and/or which must be physically connected with the Science Building so that the Medical Center may continue to operate efficiently; and

WHEREAS, the applicant states that the existing Berg Institute, Medical Science Building, and the Smilow Research Building, with which the Science Building must be physically and functionally integrated to satisfy the Medical Center's programmatic needs, dictate the configuration of the Science Building's floor plates, which are further limited by the 65 percent lot coverage limitation applicable to the zoning lot, and as a result of these constraints, the amount of dedicated laboratory space that can be provided in the Science Building is severely limited unless the building is able to exceed the applicable threshold or tower coverage; and

WHEREAS, the applicant further states that the existing Berg Institute requires that the Science Building be located as far to the north on the Development Site as possible so as to create appropriate alignments for an

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efficient shared circulation system, and shifting the Science Building's laboratory floors to the south to comply with rear yard equivalent and height and setback regulations would compromise the ability to make critical physical and functional connections between the lower floors of the Science Building and the lower floors of the adjacent Berg Institute; in particular, the applicant states that connections to the Berg Institute are restricted by existing shafts located to the immediate west of the Development Site, which contain extensive mechanical and other infrastructure services serving the Berg Institute, and locating the Science Building at the northern end of the Development Site allows for a critical overlap between the Science Building and the Berg Institute so that connections can be made to the Berg Institute's existing circulation paths; and

WHEREAS, the applicant represents that complying with the applicable rear yard equivalent, height and setback, and lot coverage regulations while providing efficient connections to the existing research facilities would also require offsets in building infrastructure at the upper laboratory levels, including stairs and MEP system distribution, which would further burden the Science Building's efficiency; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs of the Medical Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Medical Center is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the Science Building would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the New Buildings would be located among a multitude of medical institutions comprising the First Avenue "biomedical corridor," including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant notes that the Development

Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, and the waiver of the rear yard equivalent, height and setback, lot coverage, and tower coverage regulations would have no discernible impact on the surrounding neighborhood; and

WHEREAS, the applicant further notes that the Science Building would only be slightly taller than the Smilow Research Center with a height of 249'-0" to the immediate north, and would be shorter than the Kimmel Pavilion hospital building to be developed on the northeast corner of the zoning lot; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses, and the Science Building would be located on the southeast corner of the zoning lot, away from such uses and in alignment with the medical uses that comprise the First Avenue biomedical corridor to the north and south; and

WHEREAS, the applicant notes that the portion of the Science Building for which waivers of rear yard equivalent and height and setback are required fronts the FDR Drive Service Road, which is bounded to the east by the FDR Drive, and farther east, the East River Esplanade and the East River, such that these non-compliances would not have any impacts on other buildings or uses; and

WHEREAS, the applicant represents that the Science Building will actually improve the visual quality of the Development Site and the surrounding neighborhood, as it would replace aging buildings on the Development Site with a development of contemporary design that visually connects with other buildings on the Medical Center campus; and

WHEREAS, the applicant further represents that the Science Building will also create a more uniform street wall along former East 30<sup>th</sup> Street, and will provide a prominent gateway to the NYU School of Medicine at the southern end of the campus, helping to establish a visual identity for the institution and to orient the significant number of visitors that the Medical Center campus receives every day; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Medical Center could occur on the existing site; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's

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program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Medical Center to fulfill its programmatic needs; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 12BSA141M, dated December 7, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, there is an existing Restrictive Declaration for hazardous materials (CRFN 2011030100673001001EF581) associated with the approved BSA New York University Kimmel Pavilion variance project (CEQR Number 11BSA029M); and

WHEREAS, since the project site is subject to an existing Restrictive Declaration, the DEP has requested that a Phase II Investigative Protocol and any other relevant or necessary supporting documents should be submitted to the New York City Office of Environmental Remediation (“OER”) for review and approval prior to any field sampling activities; and

WHEREAS, DEP reviewed the applicant’s stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring and determined that a minimum of 31 dBA window-wall noise attenuation is required on the north and east facades of the proposed building and an alternate means of ventilation should be provided in order to achieve an interior noise level of 45 dBA; and

WHEREAS, DEP determined that, with these noise measures, the proposed project is not anticipated to result in significant noise impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the

proposed action will not have a significant adverse impact on the environment.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the construction of a new biomedical research facility on the main campus of the New York University Langone Medical Center that does not comply with zoning regulations for rear yard equivalent, height and setback, lot coverage, and tower coverage, contrary to ZR §§ 24-382, 24-522, 24-11, and 24-54, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 10, 2012” – sixteen (16) sheets; and *on further condition*:

THAT the parameters of the proposed buildings will be in accordance with the approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor will obtain from OER a Notice to Proceed;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided it with a Notice of Satisfaction from OER;

THAT the proposed building’s windows on the north and east facades will have a noise attenuation rating of 31 dBA OITC and that an alternate means of ventilation (central heating and air-conditioning) will be provided throughout the building;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

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# MINUTES

## 42-10-BZ

APPLICANT – Sheldon Lobel, P.C., for 2170 Mill Avenue LLC, owner.

SUBJECT – Application March 29, 2010 – Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations. R3-1/C2-2 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, 116’ west of intersection with Strickland Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

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## 35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105’ west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to February 26, 2013, at 1:30 P.M., for adjourned hearing.

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## 113-11-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Patrick’s Home for the Aged and Infirm, owners.

SUBJECT – Application August 10, 2011 – Variance (§72-21) to permit a proposed enlargement of a Use Group 3 nursing home (*St. Patricks Home for the Aged and Infirm*) contrary to rear yard equivalent requirements (§24-382). R7-1 zoning district.

PREMISES AFFECTED – 66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot 76, Borough of Bronx.

### COMMUNITY BOARD #8BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.

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## 190-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 1197 Bryant Avenue Corp., owner.

SUBJECT – Application December 15, 2011 – Variance (§72-21) to legalize Use Group 6 retail stores, contrary to use regulations (§22-10). R7-1 zoning district.

### Community Board #3BX

PREMISES AFFECTED – 1197 Bryant Avenue, northwest corner of the intersection formed by Bryant Avenue and Home Street. Block 2993, Lot 27, Borough of Bronx.

### COMMUNITY BOARD #3BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.

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## 30-12-BZ

APPLICANT – Eric Palatnik, P.C., for Don Ricks Associates, owner; New York Mart Group, Inc., lessee.

SUBJECT – Application February 8, 2012 – Special Permit (§73-49) to permit accessory parking on the roof of an existing one-story supermarket, contrary to §36-11. R6/C2-2 zoning district.

PREMISES AFFECTED – 142-41 Roosevelt Avenue, northwest corner of Roosevelt Avenue and Avenue B, Block 5020, Lot 34, Borough of Queens.

### COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for decision, hearing closed.

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## 57-12-BZ

APPLICANT – Eric Palatnik, P.C., for Mykola Volynsky, owner.

SUBJECT – Application March 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); less than the required rear yard (§23-37). R4 zoning district.

PREMISES AFFECTED – 2670 East 12<sup>th</sup> Street, between Shore Parkway and Gilmore Court, Block 7455, Lot 85, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

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# MINUTES

## 209-12-BZ

APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.

SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.

PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 212-12-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Conver Realty/Pat Pescatore, owners; Sun Star Services, LLC, lessee.

SUBJECT – Application July 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Massage Envy*) in the cellar and first floor of the existing commercial building. C2-2/R6B zoning district.

PREMISES AFFECTED – 38-03 Bell Boulevard, east side of Bell Boulevard, 50.58' south of intersection formed by Bell Boulevard and 38<sup>th</sup> Avenue, Block 6238, Lot 18, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 241-12-BZ

APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.

SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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## 275-12-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Fayge Hirsch and Abraham Hirsch, owners.

SUBJECT – Application September 6, 2012 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141), and side yard (§23-461) regulations. R2 zoning district.

PREMISES AFFECTED – 2122 Avenue N, southwest corner of Avenue N and East 22<sup>nd</sup> Street, Block 7675, Lot 61, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to January 15, 2013, at 1:30 P.M., for continued hearing.

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## 283-12-BZ

APPLICANT – Sheldon Lobel, P.C., for 440 Broadway Realty Associates, LLC, owner.

SUBJECT – Application September 24, 2012 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar of the existing building, contrary to Section 42-14D(2)(b). M1-5B zoning district.

PREMISES AFFECTED – 440 Broadway, between Howard Street and Grand Street, Block 232, Lot 3, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 8, 2013, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*