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224-14-BZ
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225-14-A
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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.

OCTOBER 7, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 7, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

822-59-BZ
APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC., owner.
SUBJECT – Application January 9, 2014 – Amendment (§11-412) to convert existing automotive service bays into an accessory convenience store and enlarge the accessory building at an existing gasoline service station. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 1774 Victory Boulevard, southwest corner of Victory Boulevard and Manor Road, Block 709, Lot 28, Borough of Staten Island.
COMMUNITY BOARD #1SI

964-87-BZ
APPLICANT – Eric Palatnik, P.C., for Leemilt Petroleum, Ink., owner; Lotus Management Group II, LLC, lessee.
SUBJECT – Application April 21, 2014 – Amendment to a previously approved Variance for the operation of an Automotive Service Station (UG 16B), with accessory uses. The Amendment seeks to convert a portion of a service bay to an accessory convenience store; Extension of Time to obtain a Certificate of Occupancy which expired on May 10, 2012; Waiver of the Rules. C1-3/R6 zoning district.
PREMISES AFFECTED – 786 Burke Avenue, aka 780-798 Burke Avenue, Block 4571, Lot 28, Borough of Bronx.
COMMUNITY BOARD #12B

203-92-BZ
APPLICANT – Jeffrey Chester, Esq., for Mowry Realty Associates LLC., The Fitness Place Forest Hills NY Ink., lessee.
SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Lucille Roberts Gym*), which expired on March 1, 2014. C2-3(in R5D) zoning district.
PREMISES AFFECTED – 70-20 Austin Street, south side of Austin Street between 70th Avenue and 70th Road, Block 3234, Lot 173, Borough of Queens.
COMMUNITY BOARD #6Q

159-07-BZ
APPLICANT – Eric Palatnik, P.C., for Stillwell Sports Center INK., owner.
SUBJECT – Application April 21, 2014 – Extension of Term of a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (Stillwell Sports Center); Amendment to permit minor alterations; Exertion of Time to obtain a Certificate of Occupancy which expired on January 1, 2012; Waiver of the Rules. C8-2 zoning district.
PREMISES AFFECTED – 2402 86th Street, south Coroner of 86th Street and 24th Avenue, Block 6864, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #11BK

APPEALS CALENDAR

106-14-A
APPLICANT – Greenberg Traurig, LLP., for 84 William Street Property Owner LLC.
SUBJECT – Application May 22, 2014 – Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30 for the construction of residential apartments to an existing building. C5-5 (LM) zoning district.
PREMISES AFFECTED – 84 William Street, northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #10M

142-14-A
APPLICANT – Goldman Harris LLC., for 92 Henry Fulton LLC., owner.
SUBJECT – Application June 17, 2014 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C6-4 zoning district.
PREMISES AFFECTED –92 Fulton Street, south side of Fulton Street, between William Street to the West and Gold Street to the east, Block 77, Lot 22, Borough of Manhattan.
COMMUNITY BOARD #1M

ZONING CALENDAR

174-13-BZ
APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for 58-66 East Fordham Road, owner; LRHC Fordham Road LLC., lessee.
SUBJECT – Application June 13, 2014 – Special Permit (§73-36) the reestablishment of an expired physical culture establishment (*Lucille Robert*), contrary to Section 32-31 zoning resolution. C4-4 zoning district.
PREMISES AFFECTED – 2449 Morris Avenue a/k/a 58-66 East Fordham Road, Block 3184, Lot 45, Borough of Bronx.
COMMUNITY BOARD #7BX

38-14-BZ
APPLICANT – Eric Palatinik, P.C., for Yury Dreysler, owner.
SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.
PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.
COMMUNITY BOARD #15BK

59-14-BZ
APPLICANT – Caroline G. Harris, for School Settlement Association Ink., owner.
SUBJECT – Application April 10, 2014 – Variance (§72-21) to permit the construction of a four-story plus penthouse community facility (UG 4), contrary to (24-11). R6B zoning district.
PREMISES AFFECTED – 114-122 Jackson Street, located on the SW corner of the Intersection of Jackson Street and Manhattan Avenue. Block 2748, Lot 21, Borough of Brooklyn.
COMMUNITY BOARD #1BK

104-14-BZ
APPLICANT – Warshaw Burnstein, LLP., for Sam Spikes, LLC, owner; 287 Broadway Fitness Group, LLC., lessee.
SUBJECT – Application May 15, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on a portion of the ground and second floors of a new building. Located in C4-3 zoning district.
PREMISES AFFECTED – 282 South 5th Street aka 287 Broadway, between Broadway and West of Marcy Avenue, Block 2460, Lot 18, Borough of Brooklyn.
COMMUNITY BOARD #1BK

117-14-BZ
APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Trinity Episcopal School Corporation, owner; Trinity Housing Comp. Inc., lessee.
SUBJECT – Application June 3, 2014 – Variance (§72-21) to permit the enlargement of a school (*Trinity School*), including construction of a 2-story building addition with rooftop turf field, contrary to required rear yard equivalents, lot coverage, height and setback, and minimum distances between buildings. Split zoning lot within R7-2 and C1-9 zoning districts.
PREMISES AFFECTED – 101 W 91st Street, 121 & 139 W 91st St and 114-124 W 92nd St, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17, 29, 40, 9029, Borough of Manhattan.
COMMUNITY BOARD # 7M

141-14-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP., for 24655 Broadway Associates, owner; Soul Cycle 2465 Broadway, LLC, lessee.
SUBJECT – Application June 23, 2014 – Special Permit (§73-36) to all a physical culture establishment (*SoulCycle*) with portions of an existing commercial building, located within a C4-6A zoning district.
PREMISES AFFECTED – 2465 Broadway, east side of Broadway, 50ft. south of intersection of West 92nd Street, Block 1239, Lot 52, Borough of Manhattan.
COMMUNITY BOARD #7M

MINUTES

REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 16, 2014
10:00 A.M.

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

SPECIAL ORDER CALENDAR

765-50-BZ
APPLICANT – Kenneth H. Koons, for R.G. Ortiz Funeral Home, Ink., owner.
SUBJECT – Application April 14, 2014 – Extension of Term (§11-411) of an approved variance permitting an existing one-story funeral parlor, which expired on November 20, 2013. C1-2 zoning district.
PREMISES AFFECTED – 1430-36 Unionport Road, eastside 43 feet South of Olmstead Avenue, Block 3933, Lot 51, Borough of Bronx.
COMMUNITY BOARD #9BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Negative:...0
Abstain: Chair Perlmutter...1
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting a funeral parlor in a C1-2 (R6) zoning district, which expired on November 20, 2013; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, with a continued hearing on August 19, 2014, and then to decision on September 16, 2014; and

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

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

WHEREAS, the subject site is located on the east side of Unionport Road, between Olmstead Avenue and Odell Street, within a C1-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since July 14, 1953, when, under the subject calendar number, the Board granted an application to permit, in a residence district, the construction of a one-story addition to and the continued operation of an existing funeral parlor, contrary to the use and bulk regulations of the 1916 Zoning Resolution; under the original grant, the Board limited to the use to a term of 20 years; and

WHEREAS, the grant has been amended and extended at various times over the years, most recently on June 14, 2005, when the Board extended the term for ten years, to expire on November 20, 2013; and

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

WHEREAS, at hearing, the Board expressed concerns regarding the lack of landscaping at the site; and

WHEREAS, in response, the applicant submitted photographs depicting the planting of evergreens along the eastern and northern lot lines; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, the Board has determined that the evidence in the record supports the finding 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, *reopens* and *amends* the resolution, dated July 14, 1953, so that as amended the resolution reads: "to permit the extension of the term of the variance for an additional ten years from November 20, 2013 expiring on November 20, 2023; on condition on condition that all work will substantially conform to drawings, filed with this application marked 'Received April 4, 2014'– (4) sheets; and on further condition:

THAT the term of the variance will expire on November 20, 2023;

THAT there will be a minimum of ten parking spaces at the site;

THAT the premises will be maintained free of debris and graffiti;

THAT any graffiti located on the premises will be removed within 48 hours;

THAT the above conditions will appear on the certificate of occupancy;

THAT conditions from prior resolution(s) not specifically waived by the Board remain in effect;

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

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

(DOB Application No. 200926098)

Adopted by the Board of Standards and Appeals, September 16, 2014.

427-70-BZ
APPLIICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.
SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:..0

Abstain: Chair Perlmutter...1

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an amendment to legalize the construction of an accessory convenience store on a site subject to a variance authorizing an automotive and gasoline service station (Use Group 16) within an R4 zoning district; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record,* with a continued hearing on July 29, 2014, and then to decision on September 16, 2014; and

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

WHEREAS, the subject site is located on the southwest corner of the intersection of Beach Channel Drive and Beach 38th Street, within a C2-2 (R4) zoning district; and

WHEREAS, the site has 151.75 feet of frontage along Beach Channel Drive, 120 feet of frontage along Beach 38th Street, and approximately 15,095 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 3,032 sq. ft. of floor area (0.20 FAR); the building contains a convenience store accessory to an automotive and gasoline service station (Use Group 16); and

WHEREAS, the Board first exercised jurisdiction over the site in the mid-1940s, when, under BSA Cal. No. 479-44-BZ, it granted an application to permit an automotive and gasoline service station in a residence use district contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, on February 23, 1971, under the subject calendar number, the Board permitted, pursuant to ZR §§ 11-412, 11-413, and 72-21, the enlargement of the lot area and reconstruction of an automotive service station with accessory uses; at the time, the site was within an R4 zoning district; the Board did not limit the operation of the use to a term; and

WHEREAS, subsequently, the grant was amended at various times; in addition, the site has been rezoned from R4 to C2-2 (R4); and

WHEREAS, the applicant represents that in 2007, the building was enlarged without the Board's authorization and pursuant to an erroneously-issued DOB permit; and

WHEREAS, accordingly, the applicant now seeks an amendment to legalize the enlargement; the enlargement reflects an increase in floor area from 450 sq. ft. (0.03 FAR) to 3,032 sq. ft. (0.20 FAR); the maximum permitted FAR for a commercial use at the site is 7,547 sq. ft. (0.50 FAR); and

WHEREAS, the applicant states that the enlarged building complies with DOB Technical Policy and Procedure Notice No. 10/1999, which sets forth the requirements for convenience stores accessory to gasoline and automotive service stations; and

WHEREAS, at hearing, the Board directed the applicant: (1) remove excessive signage at the site; (2) enclose the garbage area; and (3) provide a proper buffer between the site and adjacent residential uses; and

WHEREAS, in response, the applicant submitted amended plans, which reflect signage in accordance with C2 regulations, newly-planted trees along the property line, and relocated trash receptacles; and

WHEREAS, based on its review of the record, the Board finds that the requested legalization 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 23, 1971, so that as amended the resolution reads: "to permit the noted modifications; *on condition* that all work will substantially conform to drawings, filed with this application marked 'Received August 26, 2014'–(7) sheets; and on further condition:

THAT the building will be limited to a maximum of 3,032 sq. ft. of floor area (0.20 FAR);

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

THAT signage will be in accordance with C2 regulations;

THAT landscaping and buffering will be maintained in accordance with the BSA-approved plans;

THAT lighting will be directed downward and away from adjoining residences;

THAT the above conditions will be noted in 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); and

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

68-91-BZ
APPLICANT –Warshaw Burstein, LLP, for Cumberland farms, Ink., owner.
SUBJECT – Application July 1, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted variance for the continued operation of an Automotive Service Station (*Gulf*) which expired on March 12, 2014; Waiver of the Rules. R5D/C1-2 and 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 – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Negative:...0
Abstain: Chair Perlmutter...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 for an automotive service station (Use Group 16B), which expired on March 12, 2014; and

WHEREAS, a public hearing was held on this application on August 19, 2016, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; 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 northwest corner of the intersection of Springfield Boulevard and Union Turnpike, partially within a C1-2 (R5D) zoning district and partially within an R2A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 1942 when, under BSA Cal. No. 150-41-BZ, the Board granted a variance to permit the construction of a gasoline service station (and a single-family residence), for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times, until its expiration on November 5, 1985; and

WHEREAS, on May 19, 1992, 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; this grant has been amended and extended at various times, most recently on March 12, 2013, for a term of ten years, to expire on May 19, 2022; and

WHEREAS, a condition of the most recent grant was that the certificate of occupancy was to be obtained by March 12, 2014; however, as of that date, a certificate of occupancy had not been obtained; and

WHEREAS, accordingly, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that the issuance of the certificate of occupancy has been delayed by the existence of several open Department of Buildings ("DOB") permit applications; and

WHEREAS, the applicant represents that the applications should be closed out within six months of the requested extension of time; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping in accordance with the previously-approved plans; and

WHEREAS, in response, the applicant provided photographs depicting the landscaping; 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 *waives* the Rules of Practice and Procedure, *reopens,* and *amends* the resolution, dated May 19, 1992, so that as amended the resolution reads: "to extend the time to obtain a certificate of occupancy until March 12, 2015; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT a new certificate of occupancy will be obtained by March 12, 2015;

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 DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB App. Nos. 401393835 and 401393648)

Adopted by the Board of Standards and Appeals, September 16, 2014.

88-92-BZ
APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.
SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of an approved variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.
PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.
COMMUNITY BOARD #10BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Negative:...0
Abstain: Chair Perlmutter...1

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term for a variance permitting an eating and drinking establishment (Use Group 6) in an R4-1 zoning district, which expired on June 28, 2014; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

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

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located northeast corner of the intersection of Ericson Place and East Tremont Avenue, within an R4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since January 12, 1954, when, under BSA Cal. No. 247-35-BZ, the Board granted an application to permit, in a residence district, the operation of an eating and drinking establishment, contrary to the use regulations of the 1916 Zoning Resolution; under the original grant, the Board limited to the use to a term of 15 years; and

WHEREAS, the 1954 grant was amended and extended at various times over the years; and

WHEREAS, on July 26, 1994, under the subject calendar number, the Board granted an application pursuant to ZR §§ 11-411 and 11-412 to permit a one-story enlargement to the eating and drinking establishment, for a term of ten years, to expire on June 28, 2004; and

WHEREAS, most recently, on October 19, 2004, the Board extended the term of the grant for an additional ten years, to expire on June 28, 2014; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, at hearing, the Board expressed directed the applicant to: (1) verify whether the partially-enclosed portion of the building is included in floor area; and (2) restripe the parking lot; and

WHEREAS, in response, the applicant: (1) indicated that the partially-enclosed area was not included in floor area; and (2) submitted a photograph depicting the restriped parking lot; and

WHEREAS, the Board has determined that the evidence in the record supports the finding 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, *reopens* and *amends* the resolution, dated July 26, 1994, so that as amended the resolution reads: "to permit the extension of the term of the variance for an additional ten years from June 28, 2014, expiring on June 28, 2024; on condition on condition that all work will substantially conform to drawings, filed with this application marked 'Received March 12, 2014'-(3) sheets and 'August 4, 2014'– (1) sheet; and on further condition:

THAT the term of the variance will expire on June 28, 2024;

THAT the premises will be maintained free of debris and graffiti;

THAT any graffiti located on the premises will be removed within 48 hours;

THAT the above conditions will appear on the certificate of occupancy;

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

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

140-92-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the enlargement of an existing school (UG3) which expired on January 26, 2014. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot(s) 10 and 36, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:...0

Abstain: Chair Perlmutter...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 of complete construction pursuant to a previously-granted variance permitting a four-story vertical enlargement of an existing two-story building occupied as a school (Use Group 3), which expired on January 26, 2014; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; and

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

WHEREAS, Community Board 1, Queens, recommends approval of the proposed enlargement; and

WHEREAS, the subject site is a through lot bounded by Crescent Street to the north and 27th Street to the south,

between 39th Avenue and 40th Avenue, partially within an M1-2/R5B zoning district and partially within an M1-2/R5D zoning district, within the Special Long Island City Mixed Use District; and

WHEREAS, on May 9, 1995, the Board granted a variance pursuant to ZR § 72-21, which permitted, in an M1-3D zoning district, a five-story and cellar horizontal enlargement of an existing four-story and cellar non-conforming school with accessory uses (Use Group 3) which did not provide the required rear yard equivalent and exceeded the maximum height limit; and

WHEREAS, subsequent to the grant, the site was rezoned from M1-3D to partially M1-2/R5B and partially M1-2/R5D, within the Special Long Island City Mixed Use District; and

WHEREAS, on January 26, 2010, the Board reopened the grant and amended it to permit a four-story enlargement, rather than the five-story enlargement originally authorized; and

WHEREAS, pursuant to the conditions of the amended grant, substantial construction was to be completed by January 26, 2014; however, the applicant represents that as of that date, substantial construction had not been completed; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction

WHEREAS, the applicant states that construction pursuant to the grant was delayed due to a lack of funding; 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 May 9, 1995, so that as amended the resolution reads: "to grant an extension of time to complete construction for a term of four years from the last expiration, to expire on January 26, 2018; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT substantial construction will be completed by January 26, 2018;

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

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

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

(DOB Application No. 410183821)

Adopted by the Board of Standards and Appeals, September 16, 2014.

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:..0

Abstain: Chair Perlmutter...1

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 operation of a gasoline service station (Use Group 16), which expired on November 21, 2010, and an extension of time to obtain a certificate of occupancy, which expired on November 21, 2001; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 3014, July 15, 2014, and August 19, 2014, and then to decision on September 16, 2014; 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 13, Queens, recommends approval of the application; and

WHEREAS, former Queens Borough President Helen Marshall recommends approval of the application, provided that neither beer nor alcohol is sold at the site; and

WHEREAS, the subject site is an irregularly-shaped lot located at the intersection of 243rd Street, South Conduit Avenue, and Francis Lewis Boulevard, within a C1-3 (R3-2) zoning district; and

WHEREAS, the site has 98.74 feet of frontage along 243rd Street, 33.32 feet of frontage along South Conduit Avenue, 79.80 feet of frontage along Francis Lewis Boulevard, 21.54 feet of frontage along 245th Street, and approximately 9,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 1,232 sq. ft. of floor area (0.13 FAR), four gasoline pump island with a total of four dispensers, and four accessory parking spaces; the building includes an accessory convenience store; the site will be operated as a Sunoco station; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since January 24, 1956 when, under BSA Cal. No. 419-55-BZ, the Board granted a variance to permit the operation of a gasoline service station, lubritorium, non-automatic auto laundry, and auto storage and repair shop, for a term of 15 years; and

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

WHEREAS, on November 21, 2000, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for the gasoline service station and to permit conversion of the auto repair shop to a convenience store; the term of the grant was limited to ten years, to expire on November 21, 2010 and a condition of the grant was that a certificate of occupancy would be obtained by November 21, 2001; and

WHEREAS, the applicant notes that the term expired more than three years ago and that a certificate of occupancy was not obtained for the use by November 21, 2001; and

WHEREAS, accordingly, the applicant now seeks 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, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping in accordance with the previously-approved plans and to remove vacuums, which were not authorized by the prior grant; and

WHEREAS, in response, the applicant provided photographs depicting the landscaping and the removal of the vacuums; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time 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 21, 2000, so that as amended the resolution reads: "to permit the extension of the term of the variance for an additional ten years, from November 21, 2010, expiring on November 21, 2020, and to extend the time to obtain a certificate of occupancy until September 16, 2015; *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 29, 2014'- (2) sheets and 'August 14, 2014'- (1) sheet; and *on further condition*:

THAT the term of the variance will expire on November 21, 2020;

THAT a new certificate of occupancy will be obtained by September 16, 2015;

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

(DOB Application No. 401042732)

Adopted by the Board of Standards and Appeals, September 16, 2014.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzhock, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction for a previously granted variance (§72-21) to legalize and enlarge a yeshiva (*Yeshiva Ohr Yitzchok*), which expired on March 23, 2014. M1-1 zoning district.

PREMISES AFFECTED – 1214 East 15th Street, between Avenue L and Locust Avenue, Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:...0

Abstain: Chair Perlmutter..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 of complete construction pursuant to a previously-granted variance permitting the enlargement of an existing school (Use Group 3), which expired on March 23, 2014; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; 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 west side of East 15th Street, between Locust Avenue and Avenue L, within an M1-1 zoning district; and

WHEREAS, on March 23, 2010, under the subject calendar number, the Board granted a variance to permit, on a site within an M1-1 zoning district, the legalization and enlargement of an existing school (yeshiva), contrary to use and bulk regulations; and

WHEREAS, pursuant to the conditions of the grant, substantial construction was to be completed by March 23, 2014; however, the applicant represents that as of that date, substantial construction had not been completed; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant states that construction

pursuant to the grant was delayed due to a lack of funding; 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 March 23, 2010, so that as amended the resolution reads: "to grant an extension of time to complete construction for a term of four years from the last expiration, to expire on March 23, 2018; *on condition* that all work will substantially conform to the BSA-approved plans; and *on further condition*:

THAT substantial construction will be completed by March 23, 2018;

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

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

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

(DOB Application No. 301345809)

Adopted by the Board of Standards and Appeals, September 16, 2014.

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrachi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED –6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

229-84-BZ

APPLICANT – Troutman Sanders LLP, for High Definition Realty, LLC. owner; Bally Total Fitness of Greater New York, lessee.

SUBJECT – Application June 16, 2014 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (*Bally's Total Fitness*) which expires on November 27, 2014. M1-1 zoning district.

PREMISES AFFECTED –75-28 Queens Boulevard, block bounded by Queens Boulevard Jacobus Street, 51st Avenue and Kneeland Street, Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

178-03-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, Inc., owner.

SUBJECT – Application June 6, 2014 – Extension of Term of a Special Permit (§73-211) permitting the operation of an automotive service station (UG 16B) which expired on April 28, 2014. C2-2/R3-2 zoning district.

PREMISES AFFECTED –114-02 Van Wyck Expressway, south west corner of Linden Boulevard and Van Wyck Expressway, Block 11661, Lot 7, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (§73-622) for the enlargement of an existing single-family detached residence. 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 #15BK

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

67-13-A

APPLICANT – NYC Board of Standards And Appeals

OWNER OF PREMISES - OTR 945 Zerega LLC, lessee.

SUBJECT – Application August 13, 2014 – Reopening by court remand for supplemental review of whether a sign at the subject site was a permitted non-conforming advertising sign in light of the Board's decision in BSA Cal. No. 96-12-A. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative: 0

Negative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Recused: Chair Perlmutter..1

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Bronx Borough Commissioner of the Department of Buildings ("DOB"), dated January 14, 2013, denying registration for a sign at the subject premises (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 Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. However, such documentation does not support the establishment of the existing sign prior to the relevant non-conforming use date. As such the sign is rejected. This sign will be subject to enforcement action 30 days form the issuance of this letter; and

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, and then to decision on September 24, 2013; and

WHEREAS, subsequent to the Board's decision on September 24, 2013, the Appellant pursued an appeal pursuant to Civil Practice Laws and Rules Article 78 to overturn the Board's denial (Matter of OTR Media Group v. Board of Standards and Appeals, (Index No. 101422/2013)); and

WHEREAS, pursuant to a stipulation signed by the Appellant and the City, dated August 13, 2014, the matter was remanded to the Board for the limited purpose of considering whether to distinguish the subject appeal from a prior appeal for signs located at 2284 12th Avenue (BSA Cal. Nos. 96-12-A and 97-12-A); and

WHEREAS, accordingly, the Board held a public hearing on September 16, 2014 at which it voted to add three recitals to the conclusion of the September 24, 2013 decision which are identified below for such purpose; and

WHEREAS, the remainder of the resolution remains from the original and the Board re-adopts its denial; and

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

WHEREAS, the subject premises (the "Premises") is located on the southwest corner of the intersection of Zerega Avenue and Bruckner Boulevard, within an M1-1- zoning district; and

WHEREAS, the Premises is occupied by a five-story commercial building; atop the building is an advertising sign with a surface area of 672 sq. ft. (the "Sign"); and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign structure (the "Appellant"); and

WHEREAS, the Appellant states that the Sign is 50 feet from and within view of the Cross Bronx Expressway, an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant notes that on March 27, 2008, DOB issued Permit No. 210039224 for the repair of the structural elements of the Sign and on April 21, 2008, DOB issued Permit No. 201143253 for the repair of the Sign itself (collectively the "Permits"); however, on January 31, 2013, DOB revoked the Permits based on its determination that the Sign was not established as a non-conforming advertising sign; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration (and related revocation of the Permits) of the Sign based on DOB's determination that the Appellant failed to provide evidence of the establishment of an advertising sign; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

REGISTRATION REQUIREMENT

WHEREAS, the relevant statutory requirements related to sign registration have been in effect since 2005; and

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:

> 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 DOB guidance document sets forth the instructions for filing under Rule 49 and states 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, on September 5, 2012, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching copies of cancelled checks, leases, and other agreements as evidence of establishment of the Sign; and

WHEREAS, on October 3, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that "[DOB is] unable to accept the sign for registration at this time (due to a) failure to provide proof of legal establishment of the sign"; and

WHEREAS, by letter dated December 3, 2012, the Appellant submitted a response to DOB, including additional leases and DOB records, which it claimed demonstrated that the Sign was legally established; and

WHEREAS, DOB determined that the December 3, 2012 submission lacked sufficient evidence of the Sign's establishment, and on January 14, 2013, issued the Final Determination denying registration; likewise, DOB revoked the Permits for the Sign by letter dated January 31, 2013; and

RELEVANT STATUTORY 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; and

* * *

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 § 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

* * *

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; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed and the Permits should be reinstated because the evidence it submitted was sufficient to demonstrate that the Sign was: (1) established as a non-conforming use; and (2) not discontinued for a period of two or more years since establishment; and

WHEREAS, the Appellant contends that the evidence it has submitted demonstrates that the Sign was established at the Premises prior to November 1, 1979 and therefore may be continued pursuant to ZR § 42-55(c)(2); specifically, the Appellant submitted: a June 12, 1978 lease between Joma Manufacturing Company (of the Premises) and Allied Outdoor Advertising (the "1978 Lease"), an affidavit from Allied Outdoor Advertising President Richard J. Theryoung (the "Theryoung Affidavit"), and an affidavit from advertising and media consultant Bruce Silverman (the "Silverman Affidavit"), and asserts that these items are, considered together, a sufficient basis for a finding that the Sign existed as of November 1, 1979; and

WHEREAS, the Appellant states that the 1978 Lease authorized Allied Outdoor Advertising ("Allied") to construct and maintain a sign atop the roof of the Premises for seven years, from June 15, 1978 to June 14, 1985; as such, it is evidence that the Sign existed as of November 1, 1979; and

WHEREAS, the Appellant contends that the Theryoung Affidavit, in which the affiant states that he was President of Allied from 1979 to 1997 and that the Sign was constructed in early 1979 and continuously maintained thereafter, further supports the establishment of the Sign; and

WHEREAS, as to the Silverman Affidavit, the Appellant notes that it should be understood as providing background information on the outdoor advertising industry in New York City in the 1970s and supportive of the establishment of the Sign; according to the affiant, recordkeeping practices in the industry at the time were so uneven that the presence of the 1978 Lease makes the existence of the Sign virtually certain; and

WHEREAS, accordingly, the Appellant asserts that it has demonstrated that the Sign existed as of November 1, 1979 and was therefore established as a non-conforming advertising sign; and

WHEREAS, the Appellant contends that the evidence it has submitted demonstrates that the Sign has not been discontinued since its establishment and is not subject to termination under ZR § 52-61; and

WHEREAS, specifically, the Appellant has submitted the following to evidence the Sign's continuity: (1) a July 15, 1980 Work Completion Notice (the "1980 Notice") for the construction of a Best Way Food Stores sign; (2) an affidavit from Frank Ferrovechio, who attests that he commuted on the Bruckner Expressway during the 1980s and 1990s and observed the Sign daily; (3) the 1980 Lease, which the Appellant asserts shows continuity from 1978 through 1985; (4) leases with substantial rents in 1988 and 1998; (5) the Theryoung Affidavit; (6) a November 26, 1996 contract for tobacco bulletins for the period 1994 to 1998; (7) miscellaneous lease forms and correspondence between Allied and Universal Outdoor from 1996, 1997, 1998, 2000, 2008 and 2009; (8) 1997 and 1998 rent invoices; (9) a 1998 late notice; (10) a check covering the period between the beginning of July 2004 and the end of August 2004; (11) insurance certificates from 2000 to 2005; (12) a 2007 lease termination; and (13) photographs of the Premises and the Sign from approximately 2005 and from February 2008

through the present; and

WHEREAS, as to any gaps in the evidence, the Appellant requests that the Board apply the evidentiary principle of the "presumption of continuity" as set forth in *Prince-Richardson on Evidence* § 3-101 (1995) and Wilkins v. Earle, 44 NY 172 (1870), to find that the Sign was not discontinued because DOB has not presented evidence of discontinuance; in particular, the Appellant asserts that under that principle, once an object, condition, or tendency is factually established, it may be presumed to continue for as long as is usual with such conditions; further, the Appellant explains that the presumption of continuity "reflects a common sense appraisal of the probative value of circumstantial evidence," Foltis v. City of New York, 287 NY 108, 115 (1941), and should be applied in the instant matter to find that the evidence supports a finding that the Sign continued even if the items of evidence of its existence do not cover the entire period in question; and

WHEREAS, furthermore, the Appellant points to the Silverman Affidavit to bolster its claim that recordkeeping was generally inconsistent in the outdoor advertising industry during most of the time period in question and that the existence of any supporting documentation is persuasive evidence that the Sign existed continuously; and

WHEREAS, as to DOB's assertion that a tax photograph from the 1980s shows that the Sign and its structure were removed, the Appellant states that such a photograph only shows the Premises at a single point in time and not over a period of time; as such, it is not sufficient evidence to conclude that the Sign was discontinued for more than two years, and the Appellant cites the Board's decision in BSA Cal. No. 96-12-A (2284 12th Avenue, Manhattan) in support of the principle that a single photo cannot, standing alone, demonstrate that a use was discontinued for more than two years; and

WHEREAS, the Appellant also notes that the 1980 Notice—which DOB asserts is evidence that the Sign was not constructed prior to November 1, 1979—merely supports the continued existence of the Sign and is not dispositive on the actual date that the Sign was established; and

WHEREAS, finally, as to whether the Sign was, as DOB contends, prohibited from being reconstructed after it was removed pursuant to ZR §§ 42-55 and 52-83, the Appellant asserts that DOB has previously accepted as a non-conforming use signs that appear to have been altered, relocated, or reconstructed; and

WHEREAS, specifically, the Appellant states that signs at the following addresses were structurally altered, relocated and/or reconstructed: 5 Eldridge Street, Manhattan; 330 East 126th Street, Manhattan; 2284 12th Avenue, Manhattan; 682-686 East 133rd Street, Bronx; 586 Third Avenue, Brooklyn; 51-06 Vernon Boulevard, Queens; and 54-30 43rd Street, Queens; and

WHEREAS, as such, the Appellant asserts that DOB's position that removal and reconstruction of the Sign violated ZR §§ 42-55 and 52-83 in this case is belied by its position in prior instances and is, thus, arbitrary; and

WHEREAS, accordingly, the Appellant states that DOB's Final Determination with respect to the Sign and revocation of the Permits should be reversed; and

DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Appellant has not submitted sufficient evidence to demonstrate the Sign was established at the Premises prior to November 1, 1979; and (2) even if the Board were to find that the Sign was established, the evidence demonstrates that it was removed and reconstructed contrary to ZR §§ 42-55; and 52-83; and

WHEREAS, DOB states that the 1978 Lease and Theryoung Affidavit are, collectively, insufficient evidence of the establishment of the Sign at the Premises prior to November 1, 1979; and

WHEREAS, DOB asserts that under Rule 49(d)(15)(b), an affidavit, on its own and without supporting documentation, is insufficient evidence of establishment; and

WHEREAS, DOB contends that although the Appellant has submitted the 1978 Lease as supporting documentation for the statements of the Theryoung Affidavit, the 1978 Lease by its terms does not demonstrate the establishment of the Sign; and

WHEREAS, in particular, DOB asserts that, according to the language employed in the 1978 Lease ("Lessee will erect the said advertising sign structure and its appurtenances"), Allied was authorized to construct and maintain a sign at the Premises, rather than maintain an existing sign at the Premises; and

WHEREAS, DOB asserts that distinction is critical, because it demonstrates that no sign existed when the 1978 Lease was executed and gives no indication as to when the rights under the lease to construct the Sign were exercised; thus, DOB concludes that the evidence fails to demonstrate the Sign was established prior to November 1, 1979; and

WHEREAS, DOB also contends that a Department of Finance tax photograph from the 1980s shows the Premises without the Sign and its structure; accordingly, DOB concludes that the Sign was removed at some point and reconstructed, in violation of ZR §§ 42-55 and 52-83; and

WHEREAS, specifically, DOB states that pursuant to ZR § 42-55, which regulates advertising signs in manufacturing districts, no advertising sign may be structurally altered, relocated or reconstructed if that sign is located in a district regulated by ZR § 42-55 and is within 200 feet of an arterial highway; and

WHEREAS, DOB notes that ZR § 52-83 allows non-conforming advertising signs in specific zoning districts to be structurally altered, reconstructed, or replaced, provided that such alteration does not create any new non-conformity; however, the section also contains an exception clause, which states, "except as otherwise provided in Section 42-55"; and

WHEREAS, therefore, DOB contends that where a non-conforming advertising sign is in a district covered by both ZR § 52-83 and ZR § 42-55, the exception clause in ZR § 52-83 requires that the more restrictive provisions of ZR §

42-55 apply; as such, in this case, ZR § 42-55 prohibits the Sign, which is within an M1-1 district and within 50 feet of an arterial highway, from being structurally altered, relocated or reconstructed; and

WHEREAS, accordingly, DOB contends that the Sign cannot have non-conforming status because it was removed and reconstructed in the 1980s contrary to ZR §§ 42-55 and 52-83; and

WHEREAS, accordingly, DOB asserts that it properly issued its Final Determination denying the registration of the Sign and properly revoked the Permits; and

CONCLUSION

WHEREAS, the Board finds that DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to November 1, 1979; and

WHEREAS, the Board agrees with DOB that, by its terms, the 1978 Lease is only evidence of what Allied was authorized to do, namely construct and maintain the Sign; and

WHEREAS, thus, the Board also agrees with DOB that nothing in the 1978 Lease provides a basis for the Board to determine when the Sign was actually constructed; the 1978 Lease speaks to, at most, when the Sign *could have been* constructed; and

WHEREAS, further, the Board finds that the only other item of evidence that is somewhat contemporaneous with the 1978 Lease is the 1980 Notice, which is dated July 15, 1980, and which suggests that the Sign construction was completed more than eight months after November 1, 1979, the required date of establishment in ZR § 42-55; and

WHEREAS, as to the Theryoung Affidavit, the Board finds that it lacks specificity and contains conclusory statements, which do not credibly establish that the Sign existed at the Premises prior to November 1, 1979; and

WHEREAS, the Board notes that although Theryoung states that he was "directly involved" in the "specific project" he provides no details regarding the dimensions, orientation, or message of the Sign; and

WHEREAS, as to the Silverman Affidavit, the Board finds that insofar as it seeks to equate the 1978 Lease with the existence of the Sign prior to November 1, 1979, it is not persuasive; indeed, the Board notes that in this case, the record indicates that there was a time period during the 1980s when a lease for the Sign existed, but the Sign—and its structure—were absent from the roof of the Premises; and

WHEREAS, accordingly, the Board agrees with DOB that the Appellant has not submitted sufficient evidence of the Sign's establishment prior to November 1, 1979; and

WHEREAS, as per the stipulation in the Matter of OTR Media Group v. Board of Standards and Appeals, the Board distinguishes the facts of 2284 12th Avenue (BSA Cal. Nos. 96-12-A and 97-12-A) in which the appellant submitted a 1999 reconsideration signed by the then-Manhattan Borough Commissioner stating that he accepted the sign and that it had been in continuous use as per a 1978 lease from the subject case; and

WHEREAS, as the Board noted in its 12th Avenue decision that the reconsideration did not establish that the then-Borough Commissioner relied solely on a 1978 lease in making his determination to accept the sign in 1999; rather, it is possible that there was additional evidence that he relied upon but did not memorialize in the hand-written, one-sentence sign-off of the 1999 reconsideration; and

WHEREAS, the Board notes that, unlike the appellant in the 12th Avenue case, the Appellant in the subject case did not submit a reconsideration or any similar document, which is viewed to be among the most valuable forms of evidence DOB accepts pursuant to TPPN 14/1988; and

WHEREAS, because the Board finds that the Sign was never established as non-conforming, it is unnecessary to determine whether the Zoning Resolution permitted its removal and reconstruction or whether the presumption of continuity impels the Board to find, based on the Appellant's evidence, that the Sign was not discontinued; and

WHEREAS, therefore, the Board finds that DOB's enforcement against the Sign is warranted, and as such, DOB properly rejected the Appellant's registration of the Sign and properly revoked the Permits.

Therefore it is Resolved, that this appeal, challenging a Final Determination issued on January 14, 2013, is denied.

Adopted by the Board of Standards and Appeals, September 16, 2014.

19-12-A

APPLICANT – Law Offices of Marvin B Mitzner, LLC., for 38-30 28th Street, LLC., owner.

SUBJECT – Application May 9, 2014 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28th Street, west side of 28th Street between 38th and 39th Avenues, Block 386, Lot 27, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

Negative:..0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

245-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law, requesting that the Board vary several requirements of the MDL. R7B Zoning District

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

214-12-BZ
APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.
SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.
PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #13BK
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative:………………...0
Negative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Abstain: Chair Perlmutter...1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 2, 2012, acting on DOB Application No. 320219018 (the "Application"), reads in pertinent part:

ZR 52-61: Use Group 16 auto laundry establishment not permitted as of right in an R5 (C2-2) zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R5B (C2-2) zoning district, the operation of an automobile laundry (Use Group 16), contrary to ZR §§ 32-10 and 52-61; and

WHEREAS, a public hearing was held on this application on March 11, 2014, after due notice by publication in *The City Record*, with continued hearings on April 29, 2014, June 24, 2014, and July 29, 2014, and then to decision on September 16, 2014; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of the application; and

WHEREAS, certain members of the surrounding community testified in support of the application; and

WHEREAS, New York State Assemblyman Steven Cymbrowitz submitted testimony in opposition to the application; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns regarding: (1) traffic; (2) noise; (3) the spraying of chemicals; (4) the obstruction of sidewalks; (5) the lack of queuing (reservoir) spaces at the site; and (6) substantial evidence that the auto laundry ceased continuous operation for more than two years and therefore may not be resumed, per ZR § 52-61; and

BACKGROUND AND SITE INFORMATION

WHEREAS, the subject site is Block 7224, Lot 70; it is located on the southwest corner of the intersection of Coney Island Avenue and Gerald Court, within an R5B (C2-2) zoning district; and

WHEREAS, the site has approximately 81 feet of frontage along Coney Island Avenue, approximately 100 feet of frontage along Gerald Court, and 7,633 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story auto laundry facility (Use Group 16) with 2,531 sq. ft. of floor area (0.33 FAR); the facility operates under the trade name "Z-Best Car Wash"; and

WHEREAS, this application is brought on behalf of the owners of the site, Shea-Max Harris, LLC and SB Real Estate Holdings, LLC (the "applicant"); and

WHEREAS, according to Certificate of Occupancy ("CO") No. 122974, an auto laundry was first authorized at the site on March 15, 1949; and

WHEREAS, in subsequent years, the Board exercised jurisdiction over the site, beginning on April 27, 1954, when, under BSA Cal. No. 924-50-BZ, the Board authorized the construction of a gasoline station on the adjacent tax lot (Block 7224, Lot 72) to be operated in conjunction with the existing auto laundry at the site; and

WHEREAS, the 1954 grant was amended and extended at various times, most recently on October 31, 1978, when the Board granted an extension of term for the operation of the gasoline station for a ten-year term, to expire on April 27, 1989; and

WHEREAS, following the 1978 extension of term, which resulted in CO No. 217331 (dated January 22, 1979 and issued for the site and Lot 72), the gasoline station was converted to an as-of-right retail store (Use Group 6) with accessory parking for 12 vehicles; DOB records indicate that this conversion was completed on September 9, 1987, resulting in CO No. 228583 (dated October 1, 1987 and issued only for Lot 72); and

WHEREAS, thus, the Board notes that although the site was under its jurisdiction from April 27, 1954 until April 27, 1989, the auto laundry use was not *authorized* under the terms of BSA Cal. No. 924-50-BZ; rather, the auto laundry was acknowledged as lawfully existing as of 1944 and only the gasoline station use on Lot 72 required the Board's authorization; as such, upon the expiration of the term of the grant on April 27, 1989, the auto laundry at the site became a non-conforming use subject to ZR § 52-61; and

PROCEDURAL HISTORY

WHEREAS, on September 23, 2010, the Application was filed to renovate the auto laundry; and

WHEREAS, the applicant states that on October 18,

2010, DOB issued an objection sheet; all objections related to the expiration of CO No. 217331, which as noted above, was applicable to both the site and Lot 72; and

WHEREAS, the applicant states that on November 1, 2010, its architect met with the DOB Brooklyn borough commissioner and the DOB plan examiner regarding the objections; according to the architect's affidavit, the borough commissioner directed the DOB plan examiner to determine "whether or not this was a legal auto laundry and to research whether or not the auto laundry had been in continuous use for the prior two years"; and

WHEREAS, the applicant states that on November 8, 2010, its architect met with the DOB plan examiner, who, according to the architect "removed all the objections concerning the use of the car wash on the grounds that it was a legal use"; and

WHEREAS, on November 29, 2010, DOB issued the work permit; the applicant represents that construction commenced shortly thereafter and was 99 percent complete when, on May 11, 2011, DOB issued a Stop Work Order and a Notice of Intent to Revoke the approvals and permits issued in connection with the Application, citing the Application's non-compliance with ZR § 33-291; and

WHEREAS, on May 18, 2011, DOB issued a second objection, citing the Application's non-compliance with ZR § 52-61, and directing the applicant to "[p]rovide proof of [sic] the non-conforming has not been discontinued for a continuous period of more than two years"; and

WHEREAS, on July 11, 2011, the applicant's architect submitted documentation to the borough commissioner regarding the continuous use of the auto laundry; the documentation included certain water, gas, and telephone bills, sales tax information, workman's compensation insurance information, deeds, and a sworn statement from a person claiming personal knowledge of the continuity of the operations of the auto laundry; and

WHEREAS, by determination dated July 18, 2011, DOB: (1) noted that the last-issued CO for the site reflected the auto laundry use; and (2) accepted the evidence as demonstrating that the auto laundry was not discontinued, per ZR § 52-61; and

WHEREAS, the applicant states that following additional discussions between the job applicant and DOB, on August 15, 2011, DOB removed all objections and rescinded the Notice of Intent to Revoke the approvals and permits, and, on August 16, 2011, rescinded the Stop Work Order; and

WHEREAS, the applicant states that subsequent to the August 16th rescission of the Stop Work Order, additional work was performed at the site; and

WHEREAS, on August 25, 2011, DOB issued another Stop Work Order, citing "reports from the public" that the auto laundry "has not been in operation for seven years"; the applicant represents that no work has been performed since this date; and

WHEREAS, on November 16, 2011, the DOB Padlock Unit began an investigation of the complaint that the auto laundry use had been discontinued per ZR § 52-61 but nevertheless remained in operation; and

WHEREAS, the Padlock Unit then commenced a proceeding in the Office of Administrative Trials and Hearings to obtain an Order of Closure for the auto laundry pursuant to Article 212 of Title 28 of the Administrative Code; and

WHEREAS, by stipulation dated May 7, 2012, the owner of the site executed a stipulation with DOB (the "Padlock Stipulation"), whereby it agreed to submit a variance application to the Board to permit the continued operation of the auto laundry; and

WHEREAS, by the express terms of the Padlock Stipulation, the auto laundry was permitted to operate and the owner agreed to file a variance application on or before July 1, 2012 and obtain a final decision from the Board regarding the variance application on or before January 1, 2013; in addition, the owner expressly waived its right to "commence administrative . . . proceedings relating to the matters disposed of by [the Padlock Stipulation], including proceedings to . . . challenge the lawfulness, authority, jurisdiction or power of the Commissioner to order the closure of the [site] pursuant to the Padlock Law" including an "appeal to [the Board] pursuant to Sections 659-669 of the New York City Charter"; and

WHEREAS, on July 10, 2012, the applicant filed the instant variance application; and

WHEREAS, on December 11, 2012, DOB issued an Order of Closure, citing the owner's failure to comply with the Padlock Stipulation; and

WHEREAS, the applicant represents that the auto laundry has not operated since the issuance of the Order of Closure; and

WHEREAS, accordingly, the applicant seeks a use variance to permit operation of an auto laundry (Use Group 16) at the site; and

VARIANCE ANALYSIS

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the owner's good faith reliance on DOB's issuance of approval of the Application and issuance of the permits; (2) the history of development at the site; and (3) the site's potential soil contamination; and

WHEREAS, to satisfy ZR § 72-21(a), the applicant primarily relies on the common law doctrine of good faith reliance; 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, most recently, in Woods v. Srinivasan, 108 AD3d 412 (1st Dept 2013) lv to appeal denied, 22 NY3d 859, 981 NYS2d 370 (2014), the Appellate Division found that, where the issue was whether construction documents and plans complied with the side lot line requirements of ZR § 23-49, DOB, rather than the property owner, was in the best position to avoid the erroneous issuance of the permit; accordingly, the Appellate Division found that the owner had relied in good faith on DOB's permit issuance and remanded to the matter to BSA to consider whether petitioner satisfied the remaining elements required for a variance; and

WHEREAS, accordingly, the Board identifies the findings for good faith reliance under the common law as: (1) that a permit was issued and later revoked based on a permit defect that existed when the permit was first issued; (2) that the permit approval process included an inquiry into the issue that would subsequently be the basis for the revocation of such permit; (3) that the owner could not have known that the permit was defective despite municipal assurances to the contrary; and (4) that construction was performed and expenditures were made subsequent to the issuance of the permit; and

WHEREAS, the applicant asserts that it has established the first element of good faith reliance in that DOB: (1) issued the permit for the Application on November 29, 2010; (2) later discovered the Application's non-compliance with ZR § 52-61 and, on August 25, 2011, ordered work under the permit to stop; and (3) revoked the permit on April 12, 2012 based on the Application's non-compliance with ZR § 52-61, which existed when the permit was first issued; and

WHEREAS, the Board agrees that the permit was issued and later revoked based on defects that existed in the Permit when initially issued; and

WHEREAS, as to whether the permit approval process included an inquiry into the issue that would subsequently be the basis for the permit's revocation, the applicant contends that on November 1, 2010 (four weeks prior to the initial issuance of the permit), the DOB borough commissioner specifically directed the plan examiner to review the Application for compliance with ZR § 52-61; and

WHEREAS, the Board accepts the applicant's representation that the initial plan examination included some inquiry into whether the auto laundry had been discontinued; however, the Board notes that according to DOB in BSA Cal. No. 296-13-A (280 Bond Street, Brooklyn), where a CO exists permitting a non-conforming use, DOB presumes that the non-conforming use has continued unless it receives a substantiated complaint that the non-conforming use has ceased for more than two years; and

WHEREAS, the Board also observes that the text of ZR § 52-61 employs clear and unambiguous language in describing when a non-conforming use must cease ("[i]f, for a continuous period of two years . . . substantially all the non-conforming uses in any building or other structure is discontinued, such . . . building or other structure shall thereafter only be used for a conforming use"); thus, the statute provides constructive notice that a non-conforming use cannot be resumed if it has been discontinued for a continuous period of two or more years; and

WHEREAS, turning to whether applicant could have known that the permit was defective despite municipal assurances to the contrary, the applicant contends that it could not have known whether the auto laundry use had been discontinued per ZR § 52-61 after the DOB plan examiner determined that it had not been discontinued; and

WHEREAS, the Board disagrees with the applicant; in contrast to the facts in Woods—where the DOB plan examiner approved a permit application based on an interpretation of the Zoning Resolution—in this case, it is unclear on what basis the DOB plan examiner removed the objection relating to ZR § 52-61 prior to the issuance of the permit on November 29, 2010; in any event, the Board finds that whether the auto laundry was discontinued per ZR § 52-61 is predominantly a question of fact; thus, the owner, not DOB, was in the "best position" to know whether as a matter of *fact* the auto laundry had ceased operating for two or more consecutive years; and

WHEREAS, further, the Board finds that when, in the presence of the owner's architect, the borough commissioner instructed the plan examiner to investigate the issue of discontinuance under ZR § 52-61, the owner and its architect had actual notice of the applicability of the two-year limitation on cessation of operations; thus, at that point, it was incumbent on the owner and its licensed professionals not to seek to obtain a permit to maintain the auto laundry use if they knew or should have known that the auto laundry had ceased operating for two or more years; and

WHEREAS, the applicant asserts that the Board does not have the authority in the context of a variance application to "revisit DOB's determination" and is limited to determining whether a permit was issued and relied upon to the owner's detriment; and

WHEREAS, on the contrary, the Board finds that where an owner seeks to satisfy the (a) finding of ZR § 72-21 by relying almost exclusively on the common law doctrine of good faith reliance, Jayne Estates, Pantelidis, and Woods dictate that the Board must make a finding of good faith; in essence, the Board must determine that the owner could not have known that its permit was issued contrary to the Zoning Resolution; thus, an inquiry into the evidence of the auto laundry's continuous use prior to the issuance of the permit is necessary in order for the Board to determine whether the owner obtained the permit in good faith; and

WHEREAS, the Board notes that the Opposition submitted substantial evidence tending to demonstrate that the auto laundry was not in fact in operation for several years; this evidence includes: (1) water bills for the site covering the time periods between June 20, 2004 and June 23, 2006 and December 27, 2006 and June 27, 2011; (2) 20 sworn statements from nearby property owners; and (3) the hearing testimony of numerous witnesses claiming personal knowledge of the site; and

WHEREAS, at hearing the Board directed the applicant to respond to the Opposition's evidence that the auto laundry did not operate for more than two consecutive years; and

WHEREAS, in response, the applicant submitted the evidence that it submitted to DOB in connection with its July 2011 submission to DOB; as noted above, the evidence included water, gas, and telephone bills, sales tax information, workman's compensation insurance information, deeds, and a sworn statement by the owner; also included a statement from its architect, which explained that the reduction in water usage from 2006 to 2009 was due to the installation of a water recycling system; and

WHEREAS, the Board observes that the water bills in the record indicate a substantial reduction in water usage at the site beginning in late December 2006; for example, during the two-year period between June 2004 and June 2006, water usage averaged approximately 45 gallons of water per day; in contrast, water usage between January 2007 and September 2010, water usage at zero gallons of water per day; and

WHEREAS, the Board finds that whether the site was using water is strongly indicative of whether it was in fact operating the auto laundry and the water bills in the record indicate that no water was being used for a period in excess of three consecutive years; and

WHEREAS, accordingly, the Board rejects the applicant's assertion that the owner could not have known that the use was in fact discontinued and finds that the owner knew or should have known that the Application was filed contrary to ZR § 52-61, particularly given that the meaning of ZR § 52-61 is not disputed; and

WHEREAS, finally, the applicant states that construction was performed and expenditures were made subsequent to the issuance of the permit; specifically, the applicant represents that it completed 99 percent of the construction authorized under the Application and expended $471,046.58 before the Stop Work Order was issued in August 2011; and

WHEREAS, the Board agrees with the applicant that it performed substantial construction and made substantial expenditures subsequent to the issuance of the permit and prior to its revocation; however, as noted above, the Board is not persuaded that the applicant has established the other requisite elements of good faith reliance

WHEREAS, accordingly, the Board finds that the applicant must establish a unique physical hardship inherent in the site, per ZR § 72-21(a); and

WHEREAS, in addition to its good faith reliance assertion, the applicant states that the site is uniquely burdened by its history of development, namely its inability to use the existing building at the site for any conforming purpose; and

WHEREAS, the applicant states that the existing building's foundation is connected to the trench drain for the auto laundry in a manner that makes removal of the drain impossible; the applicant also represents that the drain cannot be filled with concrete or other materials because without destabilizing the building; accordingly, the applicant states that both the building and the drain must be demolished, at a cost of approximately $100,000; and

WHEREAS, the Board acknowledges that it has found the inability to utilize an existing building for conforming uses can contribute to a site's uniqueness, per ZR § 72-21(a); however, the Board also notes that the applicant has not demonstrated that demolition or major alteration of this particular building will require extraordinary costs or practical difficulty; therefore, even assuming that the existing building at the site is a unique physical condition, the applicant has failed to demonstrate that such uniqueness creates a hardship that would justify the requested use variance; and

WHEREAS, the applicant also represents that, based on its preliminary investigation (a Phase I investigation), there may be soil contamination from the gasoline station that operated on the adjacent lot for approximately 30 years or from other sources, resulting in estimated environmental remediation costs of approximately $442,500; and

WHEREAS, the Board finds that the extent of remediation required at the site cannot be determined without a Phase II investigation and that the estimated costs owing to contamination are, at best, speculative; therefore, the Board finds that the applicant has not demonstrated that its site is uniquely burdened by contaminated soil; and

WHEREAS, consequently, the Board finds that the applicant has not satisfied ZR § 72-21(a); and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return of: (1) a conforming commercial use; and (2) the proposed auto laundry; and

WHEREAS, the applicant contends that only the proposal will result in a reasonable rate of return; and

WHEREAS, the Board acknowledges the applicant's representations regarding the economic feasibility of the site;

however, because the Board has determined that ZR § 72-21(a) has not been satisfied under the doctrine of good faith reliance, the costs owing to such reliance cannot be considered by the Board in determining whether a conforming use results in a reasonable return on investment, per ZR § 72-21(b); and

WHEREAS, the Board finds that if such costs are discounted, the applicant has not demonstrated that a conforming commercial use fails to result in a reasonable return on investment; and

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

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a diverse array of commercial and auto-oriented uses, including an auto dealership on the block directly north of the site along Coney Island Avenue; the applicant also notes that C8-1 zoning districts—where an auto laundry use would be permitted as-of-right—are mapped within four blocks of the site; and

WHEREAS, the applicant notes that the main entrance to the site is along Coney Island Avenue, which it describes as a major, two-way commercial roadway, 100 feet in width; and

WHEREAS, the applicant asserts that the auto laundry is a well-established use at the site, despite not complying with the subject R5B (C2-2) district regulations, in that is has existed since 1944; and

WHEREAS, the applicant states that the auto laundry proprietor has worked with surrounding businesses, residents, and the community board to devise operational conditions that will minimize the impact of the auto laundry on the neighborhood, including reducing noise, odors, and hours of operation and managing traffic at the site and along Coney Island Avenue; and

WHEREAS, the applicant also submitted an affidavit in support of the application from the owner of the auto dealership, as well as several letters from nearby businesses and residents; and

WHEREAS, as to the Opposition's concerns regarding noise, the applicant states that construction pursuant to the Application improved the noise attenuation and that, if the variance is granted, it will continue to explore further sound attenuation measures; and

WHEREAS, at hearing, the Board expressed concerns regarding the lack of reservoir spaces available on the site, noting that although pursuant to ZR § 32-25, an auto laundry is required to provide "reservoir space for not less than ten automobiles per washing lane" on the zoning lot and that per DOB Memorandum dated January 15, 1975, such reservoir spaces must be provided for autos "awaiting entry into the washing equipment," the proposal reflects no such reservoir spaces on the site; in addition the Board noted that there are residences directly north and west of the site, including a home that is approximately 25 feet from the rear wall of the auto laundry; and

WHEREAS, in response, the applicant stated that it would control the flow of traffic into the site using flagmen, with queuing of cars along Coney Island Avenue; the applicant also submitted evidence that many auto laundries do not comply with the zoning requirements regarding reservoir spaces as well as an animation of how traffic is to be managed; finally, the applicant asserts that the current configuration and proposed operation of the auto laundry is a significant improvement over the conditions prior to the 2010-2011 renovation; and

WHEREAS, the Board finds that the proposal will have a significant and detrimental impact on traffic in the surrounding neighborhood; the proposed queuing along Coney Island Avenue will result in an unacceptable level of inconvenience to the residents of Gerald Court, create traffic and parking problems for businesses in the vicinity of the site, and significantly delay the movement of vehicular traffic along Coney Island Avenue; as such, the application does not satisfy ZR § 72-21(c); and

WHEREAS, as to whether the hardship asserted by the applicant was created by the owner or a predecessor in title, per ZR § 72-21(d), the applicant states that it was not but was rather due to the owner's good faith reliance on the approval of the Application and issuance of the permit in 2010; and

WHEREAS, the Board disagrees; as set forth above, the 2010 renovation of the building was commenced after the owner of the site had constructive notice (the existence of ZR § 52-61, knowledge of which owners, lessees, tenants, and contract vendees are charged) and actual notice (the November 1, 2010 meeting between the owner's architect, the plan examiner, and the borough commissioner, which included a discussion of ZR § 52-61) of the two-year limitation on discontinuance of non-conforming uses; and

WHEREAS, accordingly, the Board finds that the asserted hardship was self-created; thus, the proposal does not satisfy ZR § 72-21(d); and

WHEREAS, finally, the Board finds that the proposal, which creates significant adverse effects on the surrounding area, is not the minimum variance necessary to afford relief, per ZR § 72-21(e); and

Therefore it is Resolved, the application to permit, pursuant to ZR § 72-21, the proposed auto laundry contrary to ZR §§ 32-10 and 52-61 is hereby *denied.*

Adopted by the Board of Standards and Appeals, September 16, 2014.

208-13-BZ
CEQR #14-BSA-122K
APPLICANT – Issa Khorasanchi, for Kenneth Segal, owner; Dimitriy Brailovskiy, lessee.
SUBJECT – Application July 8, 2013 – Special Permit (§73-36) to legalize the use of a physical culture establishment (*Fitness Gallery*) located on the second floor of a two story commercial building. C8-1/R4 zoning district.
PREMISES AFFECTED – 1601 Gravesend Neck Road, Gravesend Neck Road, between East 16th and East 17th Street, Block 7377, Lot 29, Borough of Brooklyn.
COMMUNITY BOARD #3BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Negative:...0
Abstain: Chair Perlmutter...1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated September 12, 2013, acting on DOB Application No. 320693291, reads, in pertinent part:

> Proposed physical culture establishment in C8 district is not a use permitted as of right, per ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C8 zoning district and partially within an R4 zoning district, the legalization of a physical culture establishment ("PCE") operating in portions of the second story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in the *City Record*, with a continued hearing on July 29, 2014, and then to decision on September 16, 2014; 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 disapproval of this application; and

WHEREAS, the subject site spans the north side of Gravesend Neck Road between East 16th Street and East 17th Street, partially within a C8 zoning district and partially within an R4 zoning district; and

WHEREAS, the site has approximately 202 feet of frontage along East 16th Street, approximately 209 feet of frontage along Gravesend Neck Road, approximately 82 feet of frontage along East 17th Street, and 28,405 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with approximately 45,000 sq. ft. of floor area (1.58 FAR); and

WHEREAS, the PCE occupies 2,500 sq. ft. of floor area on the second story and is operated as Fitness Gallery; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R4 portion of the site; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 6:00 a.m. to 11:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

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

WHEREAS, the Fire Department states that it has no objection to the proposal; and

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

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

WHEREAS, at hearing, the Board questioned the egress and ADA compliance of the proposal; and

WHEREAS, in response, the applicant stated a note will be added to the plans indicating that all accessibility and egress would be as reviewed and approved by DOB; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; 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 II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA122K dated March 4, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C8 zoning district and partially within an R4 zoning district, the legalization of a PCE operating in portions of the second story 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 June 26, 2014" Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on August 1, 2023;

THAT the PCE not will operate within the R4 portion of the site;

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

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

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

294-13-BZ
CEQR #14-BSA-062M

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:..0

Abstain: Chair Perlmutter...1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated September 3, 2013, acting on DOB Application No. 121688263, reads, in pertinent part:

> Proposed conversion of non-residential building is not permitted as defined in ZR 43-17 and it requires BSA approval; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district, the conversion of the second and third floor of an existing three-story building and the addition of a fourth and partial fifth floor for residential use (Use Group 2), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with continued hearings on June 24, 2014, July 29, 2014, and August 19, 2014, and then to decision on September 16, 2014; and

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

WHEREAS, Community Board 2, Manhattan, stated that it did not object to the application on the condition that there not be an eating or drinking establishment at the site; and

WHEREAS, the subject site is located on the west side of Lafayette Street between Spring Street and Broome Street, within an M1-5B zoning district; and

WHEREAS, the site has 25 feet of frontage along Lafayette Street, a lot depth of 75 feet, and 1,875 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story building with 4,875 sq. ft. of floor area and 2.6 FAR; and

WHEREAS, the first floor and cellar are currently occupied by a retail store and the second and third floors are vacant; and

WHEREAS, Use Group 6 is not permitted below the floor level of the second story within the subject M1-5B zoning district; and

WHEREAS, although the applicant asserts that the retail use is a lawful pre-existing nonconforming use, the applicant initially sought approval for Use Group 6 use on the first floor as part of the variance; and

WHEREAS, however, during the Board’s review process, the applicant withdrew its request for a waiver to allow Use Group 6 use on the first floor, leaving only the request for residential use on the second, third, and new fourth and partial fifth floors with Use Group 2 residential use; and

WHEREAS, the Board does not take any position on the legality of the first floor and cellar use and, in light of the applicant’s withdrawal of the request to allow Use Group 6 use, the Board does not grant waiver for such use; and

WHEREAS, the applicant states that the proposed enlarged building will be five stories with 6,278 sq. ft. of floor area (3.35 FAR) and the second through fifth floors will be occupied as a single-family residence with a floor area of 4,403 sq. ft.; and

WHEREAS, the applicant proposes for the third and fourth floors to remain at the current depth of the third floor of approximately 46’-8” (leaving a rear yard of approximately 28’-3”); the fifth floor will be set back approximately 21’-5” from the street wall and 40’-0” from the rear lot line; and

WHEREAS, because Use Group 2 is not permitted within the subject M1-5B zoning district, the applicant seeks a

use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the shallow lot depth and small floor plate; (2) the underbuilt nature of the existing building; and (3) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the lot size, the applicant notes that the lot has a shallow depth of 75 feet and width of 25 feet; and

WHEREAS, the applicant asserts that such dimensions are insufficient to accommodate conforming manufacturing uses and uniquely small within the area; and

WHEREAS, the applicant states that the surrounding lots and the vast majority of lots in the area all have depths of 100 feet or greater; and

WHEREAS, specifically, the applicant analyzed 86 lots in the immediate area within the M1-5B zoning district and found that, of the 86, only 15 had depths of less than 100 feet and of those, only nine had depths of less than 75 feet; and

WHEREAS, additionally, the applicant states that there are only nine lots with lot area of 2,000 sq. ft. or less and they are either vacant (one) or not occupied by manufacturing use (eight); and

WHEREAS, further, the applicant states that the eight buildings on small lots all cover almost the entire lot; and

WHEREAS, the applicant represents that none of the nine shallower lots are used for manufacturing uses; and

WHEREAS, the applicant asserts that the remaining lots in the study area all have significantly larger lot areas and are occupied with buildings with greater FAR; only two of the nine undersized lots also have an FAR below 3.0 and shallow depths; and

WHEREAS, as to the existing bulk, the applicant notes that the building is currently constructed to 2.63 FAR but has a potential for 5.0 FAR; the applicant notes that only 13 buildings in the study area are built to 3.0 FAR or lower and of those 13, only three also have a lot depth of less than 100 feet; and

WHEREAS, the applicant concludes that only 3.4 percent of buildings in the surrounding area within the M1-5B zoning district are underbuilt to the same degree (less than 3.0 FAR) and occupy a shallow lot (less than 100 feet); and

WHEREAS, further, the applicant states that none of the 13 buildings that are underbuilt are occupied with manufacturing use but are commercial or mixed-use buildings; and

WHEREAS, the applicant asserts that the existing building is obsolete for a manufacturing use in the following ways: (1) small floor plates, (2) the absence of elevators, (3) the absence of a loading dock, and (4) constrained vehicle circulation and parking conditions which inhibit access to the building; and

WHEREAS, as to the floor plates, the applicant asserts that they are too small to support a manufacturing use in that the first and second floors have a gross floor area based on the lot line dimensions of 1,875 sq. ft. but the functional space in the building from interior wall to interior all is 1,628 sq. ft., with an interior wall width and depth of 22 feet by 74 feet; and

WHEREAS, additionally, the applicant asserts that the absence of a freight elevator, and only a single staircase in the building, create difficulty in the vertical transfer of goods for a conforming use; and

WHEREAS, the applicant asserts that to install an elevator in the building, which is already underbuilt, would only decrease the usable floor area and at significant cost; and

WHEREAS, additionally, the applicant notes that there is not a loading dock and the only access to the building is two pedestrian doors at the street entrance making the transfer of wholesale products and oversized shipments impossible; and

WHEREAS, finally, the surrounding traffic and parking conditions constrain access to the site, specifically due to being 150 feet from a five-corner intersection and across the street from Petrosino Square, a designated New York City Park; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered individually and 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, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the applicant considered the following four as-of-right scenarios: (1) as-of-right manufacturing; (2) as-of-right office; (3) as-of-right office expansion; and (4) as-of-right Join Living Work Quarters for Artists; and (5) the original variance proposal with a floor area of 6,750 sq. ft. and a rear setback of 20'-0" at the third and fourth floors; and

WHEREAS, the applicant notes that among the costs associated with the first three scenarios would be the addition of elevators which would further reduce the constrained floor plates that are already insufficient for conforming use; and

WHEREAS, the applicant concludes that none of the as-of-right alternatives would realize a reasonable rate of return; and

WHERAS, the applicant also analyzed a lesser variance scenario consisting of the existing building with the second and third floors being converted to residential use and found that a sufficient rate of return could not be realized; and

WHEREAS, the applicant concluded that only the initially proposed five-story mixed-use building with retail on the first floor and a single-family home on the second through fifth floors would realize a reasonable rate of return; and

WHEREAS, however, at the Board's direction, the applicant analyzed the current lesser variance proposal which includes a floor area of 6,278 sq. ft. and a rear setback of 28'-3 ½" at the third and fourth floors, and concluded that it allows for a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance

with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant asserts that the surrounding area is characterized by five- to seven-story commercial buildings and lofts occupied by retail uses on the ground floor and residential uses on the upper floors; and

WHEREAS, the applicant submitted an area land use map which reflects that there are only six manufacturing buildings within a 400-ft. radius of the site; and

WHEREAS, the applicant states that adjacent to the site to the north and south are ground floor restaurant uses; the block includes an eleven-story residential building with ground floor retail, built pursuant to a BSA variance, at 204-210 Lafayette Street (see BSA Cal. No. 71-02-BZ); and

WHEREAS, the applicant represents that the building's first floor, which is not a subject of this application, has been used as a commercial use since 1943, as evidenced by a 1943 Certificate of Occupancy and, thus can be established as a non-conforming use; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of one dwelling unit and the continuation of ground floor retail will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant states that the building's proposed street wall of 46 feet, total height of 57 feet, and floor area of 6,278 sq. ft. (3.35 FAR) are compatible with the character of the surrounding area and well within the parameters for conforming use in the subject zoning district, which allows a maximum building height of 85 feet and floor area of 9,375 sq. ft. (5.0 FAR); and

WHEREAS, the Board notes that the applicant originally proposed to extend the rear wall at the third floor and construct the fourth floor directly above it to reduce the existing rear setback above the second floor from 28'-3 1/2" to 20'-0"; and

WHEREAS, at hearing, the Board expressed concern regarding the proposed rear yard depth of 20'-0"; the Board noted that although there are no bulk regulations for residential buildings in manufacturing districts, the Board has historically required a rear yard depth of 30'-0", which is consistent with the requirement in zoning districts where residential use is permitted as-of-right; and

WHEREAS, at the Board's direction, the applicant revised the plans to maintain the existing setback of 28'-3 1/2" at the existing third floor and to provide the same at the new fourth floor; and

WHEREAS, the applicant notes that the full lot coverage of the subject building's first and second floors and setback of 28'-3 1/2" at the third floor are historic conditions and that the adjacent neighbor to the rear of the site provides an open space of 12 feet to its rear lot line; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's history of development, size and narrowness, and the limited economic potential of conforming uses on the lot; and

WHEREAS, as to the minimum variance, the Board notes that the applicant originally requested a variance for first floor Use Group 6 use and Use Group 2 use on the upper floors, but subsequently withdrew its request for a variance for the first floor; and

WHEREAS, additionally, the applicant initially proposed a rear setback at the third and fourth floors of 20'-0", a partial fifth floor with approximately 500 sq. ft. of floor area; and a total floor area of 6,750 sq. ft.; and

WHEREAS, at the Board's direction, the applicant revised the plans to include a rear setback of 28'-3 ½" at the third and fourth floors and a reduced partial fifth floor, which now has a floor area of approximately 198 sq. ft. and the proposed total floor area was revised to 6,278 sq. ft.; and

WHEREAS, accordingly, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-062M, dated October 1, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6

NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district, the conversion of the second and third floor of an existing three-story building and the addition of a fourth and partial fifth floor for residential use (Use Group 2), contrary to ZR § 42-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 2, 2014"- six (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum total floor area of 6,278 sq. ft. (3.35 FAR), a residential floor area of 4,403 sq. ft. (2.35 FAR), one dwelling unit, a maximum street wall height of 46'-0", a maximum building height of 57'-0", and a minimum rear setback of 28'-3 ½" beginning above the second story;

THAT the Board has not approved Use Group 6 use or any other use which does not conform to the underlying use regulations for the first floor and cellar; thus, the use of the first floor and cellar is subject to DOB review and approval and is not within the scope of the variance;

THAT substantial construction will be completed in accordance with ZR § 72-23;

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

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

THAT the Department of Buildings must ensure compliance 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 16, 2014.

298-13-BZ
CEQR #14-BSA-065Q

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner.
SUBJECT – Application November 1, 2013 – Special Permit (§73-49) to permit 36 rooftop parking spaces, accessory to an existing three story and cellar physical culture establishment (*Spa Castle*). M1-1 zoning district.
PREMISES AFFECTED – 11-11 131st Street, 11th Avenue between 131st and 132nd Street, Block 4011, Lot 24, Borough Queens.
COMMUNITY BOARD #1Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Negative:...0
Abstain: Chair Perlmutter...1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 23, 2013, acting on DOB Application No. 420848550, reads:

> Proposed rooftop parking area is contrary to ZR Section 44-11; and

WHEREAS, this is an application under ZR § 73-49 to permit, on a site located within an M1-1 zoning district, 36 parking spaces on the rooftop of a three-story commercial building occupied by a physical culture establishment ("PCE"), contrary to ZR § 44-10; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in the *City Record*, and then to decision on September 16, 2014; and

WHEREAS, the site 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; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application; and

WHEREAS, the subject site spans the south side of 11th Avenue, between 131st Street and 132nd Street, within an M1-1 zoning district; and

WHEREAS, the site has 170 feet of frontage along 131st Street, 200 feet of frontage along 11th Avenue, 131 feet of frontage along 132nd Street, and 30,124 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story commercial building with 29,787 sq. ft. of floor area (0.99 FAR); the building is occupied by a PCE ("Spa Castle"), the operation of which the Board authorized on July 18, 2006, under BSA Cal. No. 202-05-BZ, for a term of ten years, to expire on July 18, 2016; and

WHEREAS, the site also includes an accessory parking facility for 108 automobiles; 54 parking spaces are within the building and 54 parking spaces are at the second, unroofed story; and

WHEREAS, the applicant notes that 89 parking spaces are required for the PCE use; and

WHEREAS, the applicant proposes to eliminate two existing parking spaces, enclose the unroofed portion of the parking facility, and construct an additional 36 parking spaces atop the enclosure (roof), resulting in a total of 140 parking spaces at the site; and

WHEREAS, because the proposed rooftop parking is not permitted as-of-right in an M1-1 district, the applicant seeks a special permit pursuant to ZR § 73-49; and

WHEREAS, the applicant notes that the proposed rooftop parking is not required but is permitted accessory parking for the PCE; likewise, the proposed parking complies with ZR § 44-12, which limits non-required accessory parking spaces to 150; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to

impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant states that the site is entirely within an M1-1 zoning district and that there are no buildings immediately adjacent to the proposed rooftop parking; the only adjacent use is the at-grade parking lot directly south of the site; the nearest building is a three-story commercial/industrial building; the nearest residential buildings are located across 11th Avenue and 131st Street; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR § 73-49 have been met; 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, accordingly, 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 617.5; 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 CEQR No. 14BSA065Q, dated October 31, 2013; and

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

WHEREAS, 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 § 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 application under ZR § 73-49 to permit, on a site located within an M1-1 zoning district, 36 parking spaces on the rooftop of a three-story commercial building occupied by a PCE, contrary to ZR § 44-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 9, 2014"- Seventeen (17) sheets; and *on further condition*:

THAT a maximum of 36 rooftop parking spaces will be permitted;

THAT a maximum of 140 parking spaces will be permitted at the site;

THAT the layout of the parking spaces will be as reviewed and approved by DOB;

THAT all lighting on the roof will be directed down and away from adjacent uses;

THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

THAT the above conditions will appear on the certificate of occupancy;

THAT the conditions set forth in BSA Cal. No. 202-05-BZ remain in effect and will also 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 will be considered approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

315-13-BZ
CEQR #14-BSA-076M
APPLICANT – Law office of Stuart Klein, for Flywheel 415 Greenwich, LLC., owner.
SUBJECT – Application December 6, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Flywheel Sports*). C6-2A (TMU) zoning district.
PREMISES AFFECTED – 415-427 Greenwich Street, 12-18 Hubert Street & Laight Street, Block 215, Lot 7504, Borough of Manhattan.
COMMUNITY BOARD #1M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3
Negative:..0
Abstain: Chair Perlmutter..1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 20, 2013, acting on DOB Application No. 121789671, reads, in pertinent part:

Proposed change of use to a physical culture establishment is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-2A zoning district, within the Special Tribeca Mixed Use District, within the Tribeca North Historic District, the legalization of a physical culture establishment ("PCE") operating in portions of the first story of a ten-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in the *City Record*, and then to decision on September 16, 2014; and

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

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

WHEREAS, certain residents of the subject building, through counsel, submitted testimony in opposition to the application, citing concerns regarding the noise generated by the PCE and the adequacy facility's sound attenuation; and

WHEREAS, the subject site spans the east side of Greenwich Street between Hubert Street and Laight Street, within a C6-2A zoning district, within the Special Tribeca Mixed Use District, within the Tribeca North Historic District; and

WHEREAS, the site has approximately 125 feet of frontage along Hubert Street, approximately 176 feet of frontage along Greenwich Street, approximately 126 feet of frontage along Laight Street, and 22,329 sq. ft. of lot area; and

WHEREAS, the site is occupied by a ten-story mixed residential and commercial building with approximately 172,444 sq. ft. of floor area (7.8 FAR); and

WHEREAS, the PCE occupies 3,154 sq. ft. of floor area on the first story and is operated as Flywheel Sports, Inc.; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 9:00 p.m. and Saturday and Sunday, from 6:30 a.m. to 9:00 p.m.; and

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

WHEREAS, the Fire Department states that it has no objection to the proposal; and

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

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect, dated July 8, 2013; 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, at hearing, the Board directed the applicant to respond to the opposition's concerns regarding noise; and

WHEREAS, in response, the applicant stated that additional sound attenuation measures were installed subsequent to the opposition notifying the applicant of its concerns; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; 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 has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14SA076M dated May 5, 2014; 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 C6-2A zoning district, within the Special Tribeca Mixed Use District, within the Tribeca North Historic District, the legalization of a PCE operating in portions of the first story of a ten-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 9, 2013" Two (2) sheets and "Received May 5, 2014" Two (2) sheets and *on*

further condition:

THAT the term of the PCE grant will expire on December 1, 2023;

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

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board-approved plans;

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

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

40-14-BZ

CEQR #14-BSA-122K

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bill Stathakos, owner; Blink Fulton Street, Ink., lessee.

SUBJECT – Application March 4, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 1413/21 Fulton Street, north side of Fulton Street, 246 Ft. West of Tompkins Avenue, Block 1854, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:..0

Abstain: Chair Perlmutter...1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated February 24, 2014, acting on DOB Application No. 320904517, reads, in pertinent part:

> Proposed physical culture establishment in a C2-4 zoning district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within partially within a C2-4 (R7D) zoning district and partially within an R6B zoning district, the operation of a physical culture establishment ("PCE") in portions of the first, second, and third stories of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in the *City Record*, and then to decision on September 16, 2014; 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 north side of Fulton Street, between MacDonough Street and Tompkins Avenue, partially within a C2-4 zoning district and partially within an R6B zoning district; and

WHEREAS, the site has approximately 108 feet of frontage along Fulton Street and 10,251 sq. ft. of lot area; and

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

WHEREAS, the proposed PCE will occupy 846 sq. ft. of floor area on the first story and 7,137 sq. ft. of floor area on the second and third stories, for a total PCE floor area of 15,120.; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R6B portion of the site; and

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

WHEREAS, the hours of operation for the 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 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 Fire Department states that it has no objection to the proposal; and

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

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

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

WHEREAS, therefore, the Board has determined that the 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 II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 14BSA122K dated March 4, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, , to permit, on a site within partially within a C2-4 (R7D) zoning district and partially within an R6B zoning district, the operation of a PCE in portions of the first, second, and third stories 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 March 4, 2014" Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on September 16, 2024;

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

THAT all sound attenuation measures proposed will be installed, maintained and reflected on the Board approved plans;

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

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

47-14-BZ
CEQR #14-BSA-129Q

APPLICANT – John M. Marmora, Esq., for RKR Properties, Inc., owner; McDonald's USA, LLC., lessee.

SUBJECT – Application March 26, 2014 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald's)* with an accessory drive-through facility. C1-2/R5D zoning district.

PREMISES AFFECTED – 122-21 Merrick Boulevard, northwest corner of Merrick Boulevard and Sunbury Road, Block 12480, Lot(s) 32, 39, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:...0

Abstain: Chair Perlmutter...1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 3, 2014, acting on DOB Application No. 420946267, reads:

> Proposed eating and drinking establishment with accessory drive-through in C1 district is not permitted as-of-right and is contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-3 (R5D) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on July 15, 2014, with a continued hearing on July 29, 2014, and then to decision on September 16, 2014; and

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

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site located on the northwest corner of the intersection of Merrick Boulevard and Sunbury Road, within a C1-3 (R5D) zoning district; and

WHEREAS, the site has approximately 160 feet of frontage along Merrick Boulevard, approximately 61 feet of frontage along Sunbury Road, 9,688 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated by KFC) with 2,116 sq. ft. of floor area (0.21 FAR), an accessory drive-through, and seven accessory parking spaces; and

WHEREAS, the applicant now seeks to demolish the existing building, reconfigure the drive-through, reduce the number of accessory parking spaces from seven to five, and change the operator from KFC to McDonald's; and

WHEREAS, the Board notes that a special permit is required for the proposed accessory drive-through facility in the C1-3 (R5D) zoning district, pursuant to ZR § 73-243; 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 11 vehicles; 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 the applicant notes that the proposed reconfiguration is a substantial improvement upon the existing KFC restaurant and drive-through, which has uncontrolled ingress and egress onto Merrick Boulevard; in contrast, the proposal reflects and elimination of the curb cut on Merrick Boulevard and the creation of additional reservoir spaces and simplification of the traffic flow; and

WHEREAS, in addition, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-3 (R5D) zoning district; as noted above, the proposed five parking spaces with the minimum requirement of ZR § 36-21; 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 motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant states that Merrick Boulevard is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores, supermarkets, banks, offices and retail stores; and

WHEREAS, the applicant states that such uses and the surrounding residential neighborhoods they support are substantially oriented toward motor vehicle use; and

WHEREAS, the Board notes that the applicant has submitted photographs of the site and the surrounding streets, which supports this representation; 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 states that the impact of the drive-through upon residences is minimal, in that most of the surrounding properties (the sites to the south, east, and west) are occupied by exclusively commercial uses; and

WHEREAS, the applicant notes that there are residences on sites directly north of the site; however, the dwellings are separated from the proposed McDonald's by a rear yard and, in most cases, an accessory parking garage; in addition, the applicant states that there will be adequate buffering between the drive-through and adjacent uses in the form of a fence, trees, shrubs, and planting beds; and

WHEREAS, accordingly, the applicant represents that the drive-through facility satisfies each of the requirements for a special permit under ZR § 73-243; and

WHEREAS, at hearing, the Board requested clarification that the proposed drive-through is a permitted accessory use for the principal use (Use Group 6 eating and drinking establishment), consistent with the ZR § 12-10 definition of "accessory"; the Board also directed the applicant to provide additional landscaping and explore a reduction in the accessory signage; and

WHEREAS, in response, the applicant submitted an amended statement, which demonstrates that the proposed drive-through is: (1) conducted on the same zoning lot as the proposed principal use (Use Group 6 eating and drinking establishment); (2) clearly incidental to and customarily found in connection with such principal use; and (3) operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of such principal use; and

WHEREAS, as such, the applicant contends and the Board agrees that the proposed drive-through complies with the ZR § 12-10 definition of "accessory"; and

WHEREAS, in addition, the applicant submitted an amended site plan, which reflects additional plantings, including a fence with ivy, and a reduction in signage for the northern façade of the building; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-129Q dated March 26, 2014; and

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

WHEREAS, 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 §§ 73-243 and 73-03 to permit, on a site within a C1-3 (R5D) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR §32-31; *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 3, 2014"-(7) sheets; and *on further condition*:

THAT the term of this grant will expire on September 16, 2024;

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 to 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; and

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

52-14-BZ

APPLICANT – Lewis Garfinkel, for Asher Fried, owner.

SUBJECT – Application April 2, 2014 – 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 less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1339 East 28th Street, east side of East 28th Street, 320'south of Avenue M, Block 7664, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez 3

Negative:..0

Abstain: Chair Perlmutter...1

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings ("DOB"), dated March 28, 2014, acting on DOB Application No. 320594763, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the permitted 50 percent;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the required 150 percent;
3. Plans are contrary to ZR 23-461 in that the proposed minimum side yard is less than the required 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, to permit, on a site within 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 August 19, 2014, after due notice by publication in *The City Record*, and then to decision on September 16, 2014; 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 the application; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 28th Street and 4,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,220 sq. ft. of floor area (0.31 FAR); and

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

WHEREAS, the applicant now seeks to convert the building to a single-family home and increase its floor area from 1,220 sq. ft. (0.31 FAR) to 3,917 sq. ft. (0.98 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 85 percent to 57 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard width of 3'-7" and decrease the site's existing side yard width of 12'-5" to 9'-11"; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 54'-7" to 20'-0"; a rear yard with a minimum depth of 30'-0" is required; and

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

WHEREAS, the applicant asserts that the proposed lot 0.98 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this assertion, the applicant identified thirteen homes within 400 feet of the subject site with FARs of 0.97 or greater; the applicant notes that eight of the thirteen homes were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) the proposed distances between the home and the buildings directly east of the site; and (2) the proposed landscaping for the site; and

WHEREAS, in response, the applicant submitted amended plans that indicate the proposed distance to the buildings directly east of the site and the proposed landscaping; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an 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, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 25, 2014"– (11) sheets and "September 3, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,917 sq. ft. (0.98 FAR), a minimum open space of 57 percent, side yards with minimum widths of 3'-7" and 9'-11, and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 16, 2014.

81-12-BZ

APPLICANT – Eric Palatnik, P.C., for McDonald's Real Estate Co., owner.

SUBJECT – Application April 5, 2012 – 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 zoning district.

PREMISES AFFECTED –98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 23, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to December 9, 2014, at 10 A.M., for continued hearing.

176-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 2 residential in an existing 6-story building with a new penthouse addition, contrary to Section 42-10 of the zoning resolution. M1-5B zoning district.

PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, Borough of Manhattan.

COMMUNITY BOARD # 2M

ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 25, 2014, at 10 A.M., for deferred decision.

5-14-BZ
APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.
SUBJECT – Application January 9, 2014 – 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 rear yard (§23-47) regulations. R3-2 zoning district.
PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

25-14-BZ
APPLICANT – Law Office of Lyra J. Altman, for Yeshiva of Flatbush, LLC, owner.
SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing four story Yeshiva. R2 & R5 zoning district.
PREMISES AFFECTED – 1601-1623 Avenue J aka 985-995 East 16th Street & 990-1026 East 17th Street, Block 6709, Lot(s) 32, 34, 36, Borough of Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

42-14-BZ
APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.
SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.
PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

50-14-BZ
APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.
SUBJECT – Application April 1, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.
PREMISES AFFECTED – 825 Manhattan Avenue aka 181 Calyer Street, north side of Calyer Street, 25' west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – To be reopened.

91-14-BZ
APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.
SUBJECT – Application May 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (§23-47). R2 zoning district.
PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

93-14-BZ
APPLICANT – Eric Palatnik, P.C., for 455 West 37 LLC., owner; MJM Boxing LLC., lessee.
SUBJECT – Application September 16, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Title Boxing Club*). R8A/C2-5 zoning district.
PREMISES AFFECTED – 455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot 6, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.

96-14-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.
SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district.
PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.
COMMUNITY BOARD #12M
ACTION OF THE BOARD – Laid over to October 28, 2014, at 10 A.M., for continued hearing.