BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
250 Broadway, 29th Floor, New York, N.Y. 10007.

Volume 100, No. 39 September 26, 2015

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SUSAN M. HINKSON, *Vice-Chair*
DARA OTTLEY-BROWN
EILEEN MONTANEZ
Commissioners

Ryan Singer, *Executive Director*
David Schnakenberg, *Counsel*

OFFICE -	**250 Broadway, 29th Floor, New York, N.Y. 10007**
HEARINGS HELD -	**22 Reade Street, Spector Hall, New York, N.Y. 10007**
BSA WEBPAGE @	**http://www.nyc.gov/html/bsa/home.html**

TELEPHONE - (212) 386-0009
FAX - (646) 500-6271

CONTENTS

CONTENTS

DOCKETS

New Case Filed Up to September 18, 2015

216-15-BZ
205 West Fordham Road, West6 Frame Road bordering Sedgwick Avenue, Block 3236, Lot(s) 0220, Borough of **Bronx, Community Board: 7**. Special Permit (§73-211): to authorize the construction of an automotive service station and accessory convenience store on an irregularly shaped lot, located within an C2-4 zoning district. C2-4 district.

217-15-BZ
89-89 Union Turnpike, Margaret Place and LIRR Montauk Line, Block 3886, Lot(s) 380, Borough of **Queens, Community Board: 4**. Special Permit (§73-36) to permit the operation a PCE gym (Retro Fitness) on the first floor of the existing 2-story commercial retail shopping center, located within an M1-1 zoning district. M1-1 district.

218-15-A
428 St. Marks Place, St. Marks Place between Hyatt Street and Victory Boulevard, Block 016, Lot(s) 0119, Borough of **Staten Island, Community Board: 1**. Proposed construction of a four story, five dwelling unit, mixed use building (office and residential) on a lot that is partially located within the bed of a mapped street contrary to Article 3 Section 35 of the General City Law. C4-2 Zoning District. C4-2SpSt. Dist. district.

219-15-BZ
945 61st Street, 61st Street between Forth Hamilton Parkway and Ninth Avenue, Block 5715, Lot(s) 039, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-36) to permit a physical culture Establishment(Kings Spa) on the second floor of a two-story building within an M1-1 zoning district. M1-1 district.

220-15-A
3858-60 Victory Boulevard, East corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot(s) 22, Borough of **Staten Island, Community Board: 2**. Proposed construction of a mixed use building that does not front on a legally mapped street , contrary to Article 3, Section 36 of the General City Law. R3A zoning district . R3A district.

221-15-BZ
41/55 Washington Street, block bounded by Washington Street, Adams Street, Front Street and Water Street., Block 038, Lot(s) 01, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to allow an physical culture establishment (Equinox) within an existing nine story commercial building located in an M1-2/R8A(MX-2) zoning district. M1-2/R8A/MX-2 district.

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

CALENDAR

OCTOBER 20, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 20, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

333-78-BZ
APPLICANT – Goldman Harris LLC., for 136 Loft Corporation, owner.
SUBJECT – Application May 5, 2015 – Amendment (72-21) to reopen and amend the captioned variance to permit the transfer of unused development rights for the premises for use in a commercial development, located within an M1-6 zoning district.
PREMISES AFFECTED – 136-138 West 24th Street, south of West 24th Street between Sixth and Seventh Avenue, Block 0799, Lot 060, Borough of Manhattan.
COMMUNITY BOARD #4M

585-91-BZ
APPLICANT – Paul F. Bonfilio Architect, PC, for Luis Mejia, owner; SAJ Auto Service, lessee.
SUBJECT – Application March 11, 2015 – Extension of Term (§11 411) a previously approved variance which permitted the operation of an automotive service station (UG 16B), which expired on March 30, 2013; Waiver of the Rules. C1-3/R4 zoning district.
PREMISES AFFECTED – 222-44 Braddock Avenue, southeast corner of Braddock Avenue and Winchester Boulevard, Block 10740, Lot 0012, Borough of Queens.
COMMUNITY BOARD #13Q

129-97-BZ
APPLICANT – Gerald J. Caliendo, RA, AIA, for Whitestone Plaza Associates Inc., owner.
SUBJECT – Application February 21, 2014 – Amendment to permit the proposed conversion of an existing lubritorium to a commercial retail establishment (use group 6) and enlargement of the basement level. C1-2/R3-2 zoning district.
PREMISES AFFECTED –150-65 Cross Island Parkway, west side of Clintonville Street distant 176.60' north of intersection of Cross Island Parkway and Clintonville Street, Block 04697, Lot 11, Borough of Queens.
COMMUNITY BOARD #7Q

369-03-BZ
APPLICANT – Law Office of Fredrick A. Becker Esq., for 99-01 Queens Boulevard LLC, owner; TSI Rego Park, LLC dba NY Sports Club, lessee.
SUBJECT – Application April 13, 2015 – Extension of Term of a previously approved Variance (§72-21) allowing the operation of a physical culture establishment/ health club which expires April 19, 2015. C1-2/R7-1 zoning district.
PREMISES AFFECTED –99-01 Queens Boulevard, north side of Queens Boulevard between 66th Road and 67th Avenue, Block 02118, Lot 1, Borough of Queens.
COMMUNITY BOARD #6Q

186-08-BZ
APPLICANT – Petrus fortune, P.E., for Followers of Jesus Mennonite Church, owners.
SUBJECT – Application November 19, 2014 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-19) permitting the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10, which expired on June 8, 2014; Waiver of the Rules. M1-1 zoning district.
PREMISES AFFECTED – 3065 Atlantic Avenue, north west corner of Atlantic Avenue and Shepherd Avenue, Block 03957, Lot 45, Borough of Brooklyn.
COMMUNITY BOARD #5BK

88-10-BZ
APPLICANT – Dennis D. Dell Angelo, for Maurice Duetsch, owner.
SUBJECT – Application February 26, 2015 – Amendment of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single family residence. The amendment seeks to reduce the floor area and coverage while adding a roof deck and the exterior design; Extension of Time to complete construction which expired on August 24, 2014. R-2 zoning district.
PREMISES AFFECTED – 1327 East 21st Street, south east corner of east 21st Street and Avenue L, Block 07639, Lot 41, Borough of Brooklyn.
COMMUNITY BOARD #14BK

CALENDAR

APPEALES CALENDAR

135-15-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Oak Point Property, LLC., owner.
SUBJECT – Application June 10, 2015 – Proposed construction of a building not fronting on a legally mapped street contrary to Section 36 Article 3 of the General City Law. M3-1 zoning district.
PREMISES AFFECTED – 50 Oak Point Avenue, north shore of east river, approximately 900 lateral feet east of East 149th Street, Block 02604, Lot 0180, Borough of Bronx.
COMMUNITY BOARD #2BX

OCTOBER 20, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 20, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

129-14-BZ
APPLICANT – Sheldon Lobel, P.C., for Mourad Louz, owner.
SUBJECT – Application June 9, 2014 – Special Permit (§73-622) as amended, to permit the enlargement of a single-family detached residence, contrary to floor area, side yard, and rear yard regulations. R5 zoning district.
PREMISES AFFECTED – 2137 East 12th Street, east side of East 12th Street between Avenue U and Avenue V, Block 07344, Lot 62, Borough of Brooklyn.
COMMUNITY BOARD #15BK

261-14-BZ
APPLICANT – Law Office of Lyra J. Altman, for Julie Haas, owner.
SUBJECT – Application October 21, 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 ZR 23-47. R-2 zoning district.
PREMISES AFFECTED – 944 East 23rd Street aka 948 East 23rd Street, Block 07586, Lot 64, Borough of Brooklyn.
COMMUNITY BOARD #14BK

322-14-BZ
APPLICANT – Eric Palatnik, P.C., for Maks Kutsak, owner.
SUBJECT – Application December 12, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); R3-1 zoning district.
PREMISES AFFECTED – 82 Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 08728, Lot 58, Borough of Brooklyn.
COMMUNITY BOARD #15BK

44-15-BZ
APPLICANT – Akerman, LLP, for 145 CPN, LLC., owner.
SUBJECT – Application March 6, 2015 – Variance (§72-21) to permit the construction of a conforming fourteen-story, (UG 2) residential building containing 24 dwelling units contrary to the maximum building height and front setback requirements (§23-633 and rear setback requirements (§23-633(b). R8 zoning district.
PREMISES AFFECTED – 145 Central Park North, between Adam Clayton Powell and Lenox Avenue, Block 01820, Lot 0006, Borough of Manhattan.
COMMUNITY BOARD #10M

Ryan Singer, Executive Director

SPECIAL HEARING
FRIDAY MORNING, SEPTEMBER 18, 2015
10:00 A.M.

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

SPECIAL ORDER CALENDAR

84-93-BZ
APPLICANT – Sheldon Lobel P.C., 671 Timpson Realty corp./Timpson Salvage Corp., owner.
SUBJECT – Application December 1, 2014 – Extension of Term of a previously Variance (§72-21) permitting the operation of a Use Group 18B scrap, metal, junk, paper or rags, storage sorting, and bailing facility, which expired on November 15, 2015. C8-3 zoning district.
PREMISES AFFECTED – 671-677 Timpson Place, West of the intersection formed by Timpson Place, Bruckner Boulevard and Leggett Avenue, Block 2603, Lot(s) 190, 192, Borough of Bronx.
COMMUNITY BOARD #2BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of the term of a variance previously granted by the Board under the subject calendar number, which expired on November 15, 2014; and

WHEREAS, a public hearing was held on this application on July 14, 2015 after due notice by publication in *The City Record*, with a continued hearing on August 25, 2015, and then to decision on September 18, 2015; and

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

WHEREAS, the subject site is comprised of Lots 190 and 192 on Block 2603, in the Bronx; the site has approximately 205 feet of frontage along the north side of Timpson Place, and is located approximately 285 feet west of the intersection formed by Timpson Place, Bruckner Boulevard and Leggett Avenue, within a C8-3 zoning district;; and

WHEREAS, the site has approximately 20,508 sq. ft. of lot area, and is occupied by a one-story plus mezzanine and cellar building; and

WHEREAS, on November 15, 1994, under the subject calendar number, the Board granted a variance pursuant to Z.R. § 72-21 to permit a change in the use of the site for the storage, sorting and bailing of scrap metal, junk, paper or rags (Use Group 18B), as well as the legalization of the existing building on the site, subject to a twenty (20) year term; and

WHEREAS, the instant applicant was timely filed as per BSA Rules of Practice and Procedure §1-07.3(b)(1); and

WHEREAS, the instant application seeks to: (1) extend the term of the variance for an additional twenty (20) years; and

WHEREAS, in response to questions raised in hearing, the applicant represents that the scrap metal operation and practices at the site meet the New York City M-1 performance standards as per Z.R. § 42-20; and removed, from a site across the street from the subject premises, all signage related to the subject use; and

WHEREAS, the Board finds that a twenty-year extension is appropriate, with the conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated November 15, 1994, so that as amended this portion of the resolution shall read: "to permit an extension of the term of the variance for a term of twenty years; *on condition* that the expansion shall substantially conform to drawings as filed with this application, marked 'Received May 6, 2015'–(3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of twenty years from November 15, 2014, expiring November 15, 2034;

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

THAT a new Certificate of Occupancy for the premises shall be obtained by September 18, 2016;

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

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

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

Adopted by the Board of Standards and Appeals, September 18, 2015.

110-99-BZ
APPLICANT – Law Office of Jay Goldstein, for Lessiz Realty, LLC., owner; 14-18 Fulton servicing, lessee.
SUBJECT – Application March 2, 2015 – Extension of Term of a previously approved Variance (§72-21) to permitted the legalization of an existing garage and automotive repair shop (Use Group l6B), which expired on June 27, 2010; Amendment to permit minor modifications to the interior layout; Waiver of the Rules. R6B zoning district.
PREMISES AFFECTED – 56-58 Kosciusko Street, south side of Kosciuszko Street between Nostrand and Bedford Avenues, Block 01783, Lot 0034, Borough of Brooklyn.
COMMUNITY BOARD #3BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson,

Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an amendment of term for a variance permitting the operation of an automotive repair shop, which expired on June 27, 2010, and to allow certain changes to the site plan; and

WHEREAS, a public hearing was held on this application on July 21, 2015 after due notice by publication in *The City Record*, and then to decision on September 18, 2015; and

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

WHEREAS, the subject has approximately 50 feet of frontage along the south side of Kosciusko Street, between Bedford Avenue and Nostrand Avenue, within an R6B zoning district in Brooklyn; and

WHEREAS, the site has approximately 5,000 sq. ft. of lot area, and is occupied by a 5,000 sq. ft. one-story brick garage; and

WHEREAS, the Board has exercised jurisdiction over the site since approximately 1925, when, under BSA Cal. No. 1052-25-BZ, it issued a resolution authorizing the use of the site as a garage for not more than five (5) motor vehicles; and

WHEREAS, on June 27, 2000, the Board issued a resolution, under the subject calendar number, authorizing the use of the site for a Use Group 16 automotive repair shop (the "Subject Variance"); and

WHEREAS, the term of the Subject Variance expired on June 27, 2010; and

WHEREAS, the applicant now seeks to amend the Subject Variance, extending the term thereof of an additional ten-year period; and

WHEREAS, the applicant also seeks to amend the site plan to reflect various modifications made by a previous operator of the site, and to permit additional modifications that will improve the operation of the site and reduce the number of cars parked at and near the site; and

WHEREAS, specifically, the applicant requests that the Board approve (1) an existing opening in the building façade which is not on the Board-approved plans; and (2) the relocation and widening of a curb cut at the site; and

WHEREAS, the applicant notes that the existing opening in the building façade which is not shown on the Board-approved plans will enable the operator of the site to service cars efficiently on an alignment lift, thereby improving ingress and egress into the garage and reducing traffic on and around the site; and

WHEREAS, the applicant notes further that positioning the curb cut between the Board-approved opening in the building façade and the existing additional opening, and widening of said curb cut from 10'-0" to 15'-0" will provide better access to both openings and improve safety on the block; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an amendment of the term of the Subject Variance, as well as the requested changes to the site plan.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure*, reopens* and *amends* the resolution, dated June 27, 2000, so that as amended the resolution reads: "to permit an extension of the term of the variance for an additional ten years from the prior expiration, to expire on June 27, 2020" and to allow certain changes to the site plan; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked 'Received August 12, 2015' –(5) sheets; and on further condition:

THAT the term of the variance shall expire on June 27, 2020;

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

THAT the above conditions and the conditions from the prior approval shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by September 18, 2016;

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

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

Adopted by the Board of Standards and Appeals, September 18, 2015.

42-08-BZ
APPLICANT – Eric Palatnik, P.C., for David Nikcchemny, owner.
SUBJECT – Application July 22, 2014 – Extension of Time to Complete Construction of a previously granted Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home which expired on January 27, 2013; Waiver of the Rules. R3-1 zoning district.
PREMISES AFFECTED – 182 Girard Street, between Oriental Boulevard and Hampton Street, Block 8749, Lot 25, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time of complete construction pursuant to a previously-granted special permit for the enlargement of a single-family home, which expired on January 27, 2013, as well as an amendment of such approval to facilitate compliance with

FEMA flood regulations; and

WHEREAS, a public hearing was held on this application on September 23, 2015, after due notice by publication in *The City Record*, with continued hearings on April 14, 2015, June 23, 2015, and August 18, 2015, and then to decision on September 18, 2015; and

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

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

WHEREAS, the subject site is located on the west side of Girard Street, between Hampton Avenue and Oriental Boulevard, in an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,240 sq. ft., and is occupied by a two-family home with a floor area of approximately 3,657 sq. ft. (0.59 FAR); and

WHEREAS, on January 27, 2009, under the subject calendar number, the Board granted a special permit under ZR §§ 73-622 and 73-03, to permit the enlargement of an existing two-family residence to be converted into a single-family home, contrary to the zoning requirements for floor area, lot coverage, open space and rear yard, as set forth in ZR §§ 23-141(b) and 23-47; and

WHEREAS, specifically, the 2009 grant authorized a floor area of approximately 6,160 sq. ft.; a lot coverage of approximately 42 percent; an open space of approximately 58 percent; and a rear yard with a minimum depth of 20'-0"; and

WHEREAS, pursuant to the conditions of the grant, substantial construction was to be completed by January 27, 2013; 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 obtain a certificate of occupancy; and

WHEREAS, the applicant states that construction pursuant to the grant was delayed due to a lack of funding and, subsequently, flooding caused by Hurricane Irene, in 2011, and Superstorm Sandy, in 2012; 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; and

WHEREAS, in light of the aforementioned flooding, the applicant represents that the site, which was previously designated as within FEMA Zone X, is now, pursuant to FEMA advisory maps issued in 2013, located in Zone AE, necessitating a revision of the previously approved plans to allow for the raising of the first floor of the proposed building; and

WHEREAS, the New York City Department of Buildings issued a decision, dated May 21, 2015, acting on Department of Buildings Application No. 320821740, which reads, in pertinent part:

> Raising building First Floor base plane 5'-2" above grade to satisfy new FEMA and Free Board elevations must be referred back to BSA for review;

and

WHEREAS, in order to comply with the foregoing, the proposed building was raised 2'-2" (to 5'-2") to meet FEMA Freeboard elevation (13' NAVD 88), which is above the Zone AE flood elevation of 11' NAVD 88 (the elevations are in NAVD 11 per Brooklyn Datum 9.37); and

WHEREAS, the applicant notes that the cellar of the proposed building will remain unexcavated; and

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 27, 2009, so that as amended the resolution reads: "to grant an extension of time to complete construction for a term of four years from the date of this grant, to expire on September 18, 2019" and also reads "to permit the noted modifications, including raising the building as specified on BSA-approved plans"; *on condition* that all work will substantially conform to drawings, filed with this application marked 'Received August 26, 2015'–(12) sheets; and *on further condition*:

THAT substantial construction will be completed by September 18, 2019;

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

THAT this approval is limited to the relief granted by the Board in response to 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 including, without limitation, those regulations applicable to flood plain elevation, excavation and cellar occupancy."

(DOB Application No. 320821740)

Adopted by the Board of Standards and Appeals, September 18, 2015.

1207-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Apple Art Supplies of New York, LLC., owner.

SUBJECT – Application December 10, 2014 – Extension of Term of a previously granted variance for the continued operation of a UG6 art supply and bookstore which expired July 5, 2012; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 305 Washington Avenue aka 321 DeKalb Avenue, northeast corner of Washington Avenue & DeKalb Avenue, Block 1918, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to November 24, 2015, at 10 A.M., for continued hearing.

156-03-BZ

APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., lessee.

SUBJECT – Application March 10, 2015 – Extension of

Time to Complete Construction of a previously granted Variance (72-21) for the construction of a seventeen story mixed-use commercial/community facility/residential condominium building which expires on January 31, 2016; Amendment. R6/C2-2 zoning district.
PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48, 38, Borough of Queens.
COMMUNITY BOARD #7Q
THE VOTE TO REOPEN HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 27, 2015, at 10 A.M., for decision, hearing closed.

127-15-BZ
APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., owner.
SUBJECT – Application May 29, 2015 – Special Permit (§73-66) to permit the construction of building in excess of the height limits established pursuant Z.R. §§61-211 & 61-22. The proposed building was approved by the Board pursuant to BSA Calendar Number 156-03-BZ. C2-2/R6 zoning district
PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48, 38, Borough of Queens.
COMMUNITY BOARD #7Q
THE VOTE TO REOPEN HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

ACTION OF THE BOARD – Laid over to October 27, 2015, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

245-12-A & 266-13-BZ
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.
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 – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4
Negative:.....0
THE RESOLUTION –

WHEREAS, the following resolution is issued is conjunction with two applications before the Board; the first is an application under ZR § 72-21, to permit, in an R7B zoning district, the legalization of a residential building (Use Group 2) that does not comply with the regulations regarding maximum floor area ratio ("FAR"), contrary to ZR § 23-145 and under the common law doctrine of good-faith reliance; the second is an application pursuant to Multiple Dwelling Law ("MDL") § 310 to legalize the enlargement of such building, contrary to MDL regulations; and

WHEREAS, because the two applications present overlapping issues of law and fact, the Board heard the cases together and the record is the same for both; and

WHEREAS, a public hearing was held on these applications on May 20, 2014, after due notice by publication in *The City Record*, with continued hearings on July 15, 2014, August 19, 2014, September 16, 2014, November 25, 2014, January 13, 2014, March 3, 2015, May 12, 2015, and August 18, 2015, and then to decision on September 18, 2015; and

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

WHEREAS, Community Board 3, Manhattan, recommends disapproval of the application; and

WHEREAS, Councilmember Rosie Mendez submitted testimony in opposition to the application; and

WHEREAS, the Greenwich Village Society for Historic Preservation submitted testimony in opposition to the application; and

WHEREAS, certain tenants of the subject building have formed a tenants' association and, through counsel, oppose the application; and

WHEREAS, collectively, the parties opposed to the

subject applications (the "Opposition") identify the following specific objections: (1) that the sixth and seventh stories of the building have already been declared illegal and the permit unlawfully issued by the Board; (2) that the tenants of the building oppose legalization of the enlargement; (3) that the hardship at the site is self-created; (4) that the Board already denied an application seeking recognition of a vested right to continue under the R7-2 district regulations; (5) that the site is not unique; (6) that the owner has received the benefit of the enlarged portion of the building since 2006, which alleviates any alleged hardship; (7) that the enlargement alters the essential character of the neighborhood, interferes with light and ventilation for adjacent properties and violates the Multiple Dwelling Law ("MDL"); (8) that the proposed variance has not been shown to be the minimum necessary to afford the owner relief; (9) that the variance, if granted, will set a precedent that will lead to similar variances; (10) that the owner of the building has harassed tenants in the subject building and in other buildings within the community district; (11) that the cases involving the subject site have been a drain on city resources; and (12) that the applicant did not provide the tenants with 30 days' notice of the initial hearing; and

WHEREAS, the subject site is located on the north side of East Fifth Street, between Avenue A and Avenue B, within an R7B zoning district; previously, the site was located within an R7-2 zoning district; however, on November 19, 2008, the site was rezoned R7B in connection with the East Village-Lower East Side Rezoning; and

WHEREAS, the site has approximately 25 feet of frontage along East Fifth Street and 2,434 sq. ft. of lot area; and

WHEREAS, at the time this application was filed, the site was occupied by a seven-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 9,094 sq. ft. of floor area (3.73 FAR) (7,725 sq. ft. of residential floor area (3.17 FAR) and 1,369 sq. ft. of community facility floor area (0.56 FAR)), a building height of 69'-0", and 17 dwelling units; and

WHEREAS, the building was enlarged pursuant to a permit (the "Permit") first issued in connection with the Application on March 31, 2006; the record reflects that the enlargement of the building was substantially completed in 2007; and

WHEREAS, the applicant represents that the subject building is over 100 years old; and

WHEREAS, the site has been the subject of several cases before the Board and New York courts; and

WHEREAS, on September 11, 2007, under BSA Cal. No. 67-07-A (the "Sliver Law Appeal"), the Board granted an appeal of a February 15, 2007 final determination by DOB that the Application complied with ZR § 23-692; on appeal, DOB defended the final determination, however, the Board found that the Permit was issued contrary to ZR § 23-692, in that it authorized the enlargement of the building beyond a height of 60'-0"; and

WHEREAS, on May 20, 2008, the Board's decision in the Sliver Law Appeal was affirmed by the New York Supreme Court in *Matter of 515 East 5th Street, LLC v. BSA*, 2008 Slip Op 31406(U) (Sup Ct NY Cnty 2008); and

WHEREAS, on November 25, 2008, under BSA Cal. No. 82-08-A (the "MDL Jurisdiction Appeal"), the Board granted an appeal of DOB's March 6, 2008 determination that DOB had the authority to approve alternatives to strict compliance with the MDL and that the alternatives proposed under the Application were an equally safe alternative; on appeal, DOB defended the aforesaid determination, however, the Board found that DOB lacked the authority to approve alternative safety measures as they apply to MDL waivers; further, the Board found that the Application should have complied with the MDL requirements for fireproof construction and did not, and the Board revoked the Permit; and

WHEREAS, on July 24, 2009, in *Matter of 515 East 5th St, LLC, 514 East 6th St, LLC, & 516 East 6th St, LLC v. BSA*, 2009 Slip Op 31652 (U) (Sup Ct NY Cnty 2009), the New York Supreme Court ruled that the MDL Jurisdiction Appeal was not ripe; accordingly, the Court directed the petitioner (the applicant in this matter) to exhaust its administrative remedies with respect to the MDL non-compliances; and

WHEREAS, consistent with the Court's decision on the MDL Jurisdiction Appeal, the applicant has filed the subject appeal seeking certain MDL waivers under BSA Cal. No. 245-12-A (the "MDL Waiver Appeal"); and

WHEREAS, finally, as noted above, the site was rezoned from R7-2 to R7B on November 19, 2008; as of that date, a certificate of occupancy had not been issued for the work performed under the Permit; accordingly, on November 19, 2008, the Permit lapsed by operation of law; and

WHEREAS, due to such lapse, the applicant filed an application with the Board seeking recognition of a vested right to continue construction under the R7-2 regulations under BSA Cal. No. 246-12-A (the "Vested Rights Appeal"); the Board denied the Vested Rights Appeal on September 10, 2013, finding that the Permit was not lawfully issued and therefore could not be the basis for a vested right; and

WHEREAS, accordingly, the applicant now seeks the subject variance under BSA Cal. No. 266-13-BZ (the "Good-Faith Reliance Variance") to legalize the sixth story of the building, which complied under the R7-2 bulk regulations but does not comply under the R7B regulations, under the common law doctrine of good-faith reliance; and 1

The Good-Faith Reliance Variance

WHEREAS, the decision of the Department of Buildings ("DOB"), dated August 19, 2013, acting on DOB Application No. 104368845 (the "Application"), reads in pertinent part:

> ZR § 23-145 – Max FAR is 3.0. Proposed enlargement exceeds maximum permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R7B zoning district, the legalization of a residential building (Use Group 2) that does not comply with the regulations regarding maximum floor area ratio ("FAR"), contrary to ZR § 23-145 and under the common law doctrine of good-faith reliance; and

WHEREAS, as stated, the applicant has demolished the

1 The applicant does not seek a variance to maintain the seventh story of the building, which has been demolished.

seventh story of the building; and

WHEREAS, the applicant states that a variance is required notwithstanding the demolition of the seventh story because the resulting reduction in floor area from 9,094 sq. ft. (3.73 FAR) to 8,675 sq. ft. (3.56 FAR) still exceeds the maximum FAR for the site which, per ZR § 23-145, is 3.0; and

WHEREAS, the applicant notes that with the removal of the seventh story, the building complies with ZR § 23-692, in that it is limited to a height of 60'-0"; 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 was later revoked due to non-compliance that existed at the time of the issuance of the permit; 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 NY2d 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 conducted a good faith reliance hearing to determine whether the property owner could claim reliance, rather than remand 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 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 states that the Permit was issued in 2006 and later revoked based on permit defects that existed when the permit was first issued; and

WHEREAS, specifically, the applicant states that the Permit authorized a two-story enlargement to an existing, five-story, non-fireproof multiple dwelling; as originally issued, the Permit allowed a building height in excess of 60'-0" and it included a series of alternative safety measures in lieu of strict compliance with the applicable provisions of the MDL; and

WHEREAS, the applicant states that in the Sliver Law Appeal and the MDL Jurisdiction Appeal, the Board found that the Permit was issued in error in that: (1) the proposed building height of greater than 60'-0" violated ZR § 23-692; and (2) DOB lacked the authority to approve alternative safety measures in lieu of strict compliance with the MDL; subsequent to the Board's decisions DOB revoked the Permit; and

WHEREAS, thus, the Board finds 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 the DOB Borough Commissioner specifically reviewed the Permit for compliance with ZR § 23-692 and with the MDL; and

WHEREAS, the Board notes that the Borough Commissioner's specific review of the Application for compliance with ZR § 23-692 and the MDL is similar to DOB's high-level, issue-specific inquiry in *Pantelidis* and a substantially more authoritative inquiry than occurred in *Woods*, where only a plan examiner had reviewed the issue of side-yard compliance; and

WHEREAS, therefore, the Board agrees with the applicant that the permit approval process included an inquiry into the issue that would subsequently be the basis for the revocation of such permit; and

WHEREAS, turning to whether the applicant could have known that the permit was defective despite municipal assurances to the contrary, the applicant contends that it could not reasonably have known that the Permit was defective with respect to either ZR § 23-692 or MDL compliance; and

WHEREAS, the applicant states, as noted above, that DOB issued a specific final determination regarding the Permit's compliance with ZR § 23-692 and the MDL and DOB defended its determinations—and therefore its initial issuance of the Permit—before the Board; in addition, the applicant contends that the interpretations DOB supported in both the Sliver Law Appeal and the DOB Jurisdiction Appeal were long-standing and allowed for "hundreds" of tenement enlargements over the years; and

WHEREAS, the Opposition asserts that since the Board found DOB's interpretations to be contrary to the clear, unambiguous requirements of ZR § 23-692 and the MDL, the

applicant had constructive notice that the Permit was erroneous; and

WHEREAS, the Board disagrees with the Opposition and notes that DOB's expertise in examining plans and construction documents is well-established and entitled to substantial deference; *see Perrotta v. City of New York, Dep't of Bldgs.*, 107 A.D.2d 320, 324, 486 N.Y.S.2d 941, 944-45 (1st Dept 1985); and

WHEREAS, accordingly, the Board finds that where DOB issues a permit and vigorously defends the interpretations underlying such permit before the Board, it would be unreasonable for the Board to conclude that the permit holder (the owner) should have known that the permit was defective when issued; 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 construction under the Permit in 2007 and expended approximately $1,139,925 before the Permit was revoked; 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; and

WHEREAS, consequently, the Board finds that the applicant has satisfied the elements for a finding of good-faith reliance on the Permit; and

WHEREAS, the Board also finds that, in accordance with *Jayne Estates, Inc.*, the owner's good-faith reliance on the Permit satisfies ZR § 72-21(a); contrary to the Opposition's assertion, where the Board recognizes that good-faith reliance has affected a site, the site need not be otherwise unique per 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) restoring the building to its pre-enlarged condition; and (2) maintaining only the sixth story but removing the seventh story; and

WHEREAS, the applicant contends that restoring the building to its pre-enlarged condition would result in a negative rate of return on investment; in contrast, maintaining the sixth story only would result in a positive rate of return; and

WHEREAS, the Opposition states that the Board must consider the income generated from the occupancy of the sixth and seventh stories of the building since it was determined that the Permit was issued contrary to ZR § 23-692 and the MDL, and that if the Board considers such income, the owner has been compensated for its reliance on the Permit; therefore, the Opposition contends that 72-21(b) cannot be satisfied; and

WHEREAS, the Board does not agree with the Opposition that it must consider the income already generated by sixth and seventh stories of the building; as noted above, the Board finds that the owner relied in good faith on the Permit and completed construction before it was determined that the Permit should not have been issued; accordingly, until the Board ruled on the validity of the Permit, the owner had a reasonable expectation of a permanent increase in the value of the building and expended substantial sums in pursuit of that increase in income; and

WHEREAS, thus, the Board finds that the proper comparison is the value of the building with the sixth story versus the value of the building without the sixth story, in light of the costs of construction; and

WHEREAS, moreover, the Board notes that, under this application, the applicant seeks a variance to permit only that portion of the enlargement that would have been permitted under the bulk regulations that were in effect when the Permit was issued in 2006; had the site not been rezoned from R7-2 to R7B, a variance would not be required2; and

WHEREAS, based upon its review of the record, the Board has determined that, owing to the owner's good-faith reliance on the Permit, there is no reasonable possibility that development in strict conformance with the R7B requirements (removal of both the sixth and seventh stories) will provide a reasonable return; and

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

WHEREAS, the applicant states that the subject block is primarily developed with five- and six-story tenements, including many buildings that are non-complying with respect to FAR; and

WHEREAS, the applicant states that the proposal complies with all bulk requirements of the subject R7B district except FAR and fully complies with the R7-2 bulk regulations, which were in effect when the Permit was issued; and

WHEREAS, as noted above, the Opposition asserts that the proposal does not satisfy ZR § 72-21(c) because: (1) adjacent buildings' light and ventilation are adversely impacted; and (2) the variance will set a precedent for permitting FAR waivers in the neighborhood; and

WHEREAS, the Board does not agree with the Opposition and finds that the sixth story is consistent with both the built character of the block and the bulk regulations in effect when it was constructed; as such, its impact is minimal; and

WHEREAS, as for the Opposition's concern about precedent, the Board observes that the role of good-faith reliance in establishing the (a), (b), (d), and (e) findings for this variance limits the precedential effect of the Board's decision; and

WHEREAS, the Board finds that this action will not

2 As noted above, in order to maintain the sixth story, the applicant must obtain, in addition to the instant zoning variance, certain MDL waivers, which the applicant is seeking under the MDL Waiver Appeal. Typically, when a permit lapses due to a change in zoning, an owner seeks recognition of a vested right. The prerequisite for that relief, however, is that the permit was lawfully issued, and, in this case, the Board determined that the Permit was not lawfully issued.

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 also 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 owner's good-faith reliance on DOB's issuance of the Permit; and

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

WHEREAS, as for the Opposition's remaining concerns, the Board finds that none forms a sufficient basis for denying the variance application; specifically, the Board finds that: (1) the denial of a vested rights appeal is irrelevant to whether the applicant has satisfied the criteria for a good-faith reliance variance; (2) landlord-tenant disputes, including the tenant harassment alleged by the Opposition, are beyond the scope of the Board's jurisdiction; and (3) the applicant complied with the Board's notice requirements for a variance application, as set forth in the 2 RCNY § 1-05.6; 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

MDL Waiver Appeal

WHEREAS, by letter dated July 10, 2012, sent to the Applicant's representative in reference to the Application, DOB stated, in relevant part, that:

> To the extent that the BSA has the authority to … waive the MDL requirements identified in the BSA resolution of November 25, 2008 [the MDL Jurisdiction Appeal] … you may request such relief from BSA. This is a final determination which may be used for purpose of appeal to BSA…; and

WHEREAS, the MDL Jurisdiction Appeal notes the determination of the Manhattan Borough Commissioner, dated March 6, 2008, to uphold the approval of Alteration Permit No. 104744877, which permitted an enlargement of the subject building and stated, in pertinent part, that:

> [t]he Department has determined that the applicant's proposed design upgrades the level of fire protection afforded the occupants that is at least equivalent to what would be required under the MDL. For instance, the design includes the installation of a sprinkler system throughout the building, even though the MDL would not require any sprinklers. Additionally, the Department will require hard-wired smoke detectors in all apartments in the building to replace any battery operated ones, even though there would otherwise be no obligation to do so.
>
> Further, many other upgrades that increase the level of safety, such as increasing the fire-resistive rating of the stair and entrance hall walls and the cellar ceilings by adding layers of fire-rated sheetrock, and the construction of fire passages from the back yards. Thus, the fire-safety upgrades in the proposed design maintain the spirit and intent of the MDL, given the practical difficulties and unnecessary hardships that would be caused in this particular case by the compliance with the strict letter of the MDL provisions.
>
> . . . The addition of the sprinkler system and the hard-wired smoke detectors will benefit current tenants by dramatically increasing the level of fire protection afforded them.
>
> This shall be considered a Final Determination by the Department on 515 East 5th Street . . ., Manhattan; and

WHEREAS, thus, the subject application, under BSA Cal. No. 245-12-A, is brought pursuant to MDL § 310 to vary the strict application of the MDL as it pertains to the subject building; and

WHEREAS, specifically, a waiver of MDL § 211.1 is sought herein since the appellant has contended that there are practical difficulties in complying with the following provisions of the MDL: MDL § 102.1 (required fireproof public corridor); MDL § 52.3 (required stair dimensions); MDL § 150.2 (stairway vestibule); MDL § 148 (enclosed stairway); MDL § 149.2 (fireproof entrance hall); MDL § 143 (first floor construction); and

WHEREAS, the Board notes that, pursuant to MDL § 310(2)(a), it has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, in support of its contention that strict compliance with the MDL will cause unnecessary hardship, the Applicant submitted a report prepared by McQuilkin Associates, LLC, dated September 11, 2012 (the "McQuilkin Report"), which quantified the construction costs associated with bringing the subject building into strict compliance with the MDL; and

WHEREAS, moreover, the Applicant represents that the proposed upgrades to the subject building will significantly enhance the fire safety of the subject building and will therefore constitute a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, the Applicant supported the foregoing representation by submitting a statement from NY Fire Consultants, Inc. on November 30, 2012; and

WHEREAS, specifically, the applicant submits that the following fire safety and egress improvements will be provided at the subject building: (1) the installation of fire-proof self-closing doors from dwelling units into common areas of the building; (2) the installation of two (2) layers of fire-retardant gypsum board on the walls of the egress stairwell and halls within the building; (3) the installation of two (2) layers of fire-retardant gypsum board in the entrance hall and corridor of the building; (4) the installation of two (2) layers of fire-retardant gypsum board on the ceiling of the building cellar; (5) the

replacement of the existing cellar stair with a fire-retardant stair; (6) the cladding of the main stairwell in the building with fire-retardant treads and risers and the placement of two (2) layers of fire-retardant gypsum board underneath such stairs; (7) the sprinklering of the entire building, including the egress stairwell, public halls, and all residential units therein; (8) the installation of hard-wired smoke detectors in all residential units in the building; (9) the installation of non-combustible floors in the common areas of the building; and (10) extension of the front and rear fire escapes to the 6th floor and roof of the subject building (collectively, the "Fire Safety Upgrades"); and

WHEREAS, based on the foregoing, the Board finds that the proposed modifications to the subject building and MDL waivers will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested waivers of the above-stated MDL requirements are appropriate, subject to the conditions set forth below; and

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 14-BSA-037M, dated12-31-2013; 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, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, in an R7B zoning district, the legalization of a residential building (Use Group 2) that does not comply with the regulations regarding maximum FAR, contrary to ZR § 23-145 and under the common law doctrine of good-faith reliance; further, the Board finds that the Applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) such that the requested variance of the requirements of MDL §§ 211.1, 102.1, 52.3, 150.2, 148, 149.2, and 143 are appropriate; all of the foregoing *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 18, 2015" – Eleven (11) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: six stories, a maximum building height of 60'-0" (exclusive of bulkheads and permitted obstructions), and a maximum floor area of 8,675 sq. ft. (3.56 FAR), as indicated on the BSA-approved plans;

THAT all of the Fire Safety Upgrades shall be performed and maintained as indicated on the BSA-approved plans;

THAT a Certificate of Occupancy will be obtained by January 1, 2017;

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 18, 2015.

91-15-A

APPLICANT – Edward Lauria, for Gerard Petri, owner.

SUBJECT – Application April 23, 2015 – Proposed construction of building that does not front on a legally mapped street, pursuant Article 3 Section 36 of the General city Law. M1-1 zoning district.

PREMISES AFFECTED – 55 Englewood Avenue, 593.35' east of Arthur Kill Road, Block 07380, Lot 0029, Borough of Staten Island

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB") dated April 10, 2015 acting on DOB Application No. 520231614, reads in pertinent part:

> The street giving access to the proposed building is not duly placed the official map of the City of New York, therefore,
>
> A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
>
> B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting

directly upon a legally mapped street or frontage space contrary to section 501.3.1 of the 2014 Building Code; and

WHEREAS, this is an application to allow the construction of a single-story commercial building which does not front on a mapped street, contrary to General City Law ("GCL") § 36; and

WHEREAS, a public hearing was held on this application on August 25, 2015, after due notice by publication in *The City Record*, continued hearing, and then to decision on September 18, 2015; and

WHEREAS, Commissioner Montanez performed an inspection of the subject site and neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommended approval of this application; and

WHEREAS, the subject site contains approximately 26,280 sq. ft. of lot area, with approximately 105 feet of frontage along the north side of Englewood Avenue, a paved 25 foot wide street of record which opens westerly to Arthur Kill Road; the site is located east of Cosmen Street and West of Goethals Avenue, within an M1-1 zoning district, within the Special South Richmond Development District; and

WHEREAS, the applicant proposes to construct a single-story, with mezzanines, concrete block with metal wall and roof commercial building with 12,120 sq. ft. of floor area (including mezzanines), consisting of nine bays; and

WHEREAS, by letter dated August 18, 2015, the Fire Department states that it has no objection to the proposal under the following conditions: (1) that the proposed building is fully sprinklered; (2) that no parking signs shall be posed along the roadway in accordance with NYC Fire Code Chapter (5 FC503.2.7.2); and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject to certain conditions set forth herein.

Therefore it is Resolved, that the decision of the DOB, dated April 10, 2015, acting on DOB Application No. 520231614, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 21, 2015"- (1) sheet; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by DOB;

THAT the proposal will comply with all applicable zoning district requirements;

THAT the building shall be fully sprinklered in conformity with the sprinkler provisions found in the New York City Fire Code and the New York City Building Code;

THAT no parking signs shall be posed along the roadway in accordance with NYC Fire Code Chapter (5 FC503.2.7.2);

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

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

Adopted by the Board of Standards and Appeals September 18, 2015.

113-15-A

APPLICANT – Goldman Harris, LLC., for Lightstone Acquisitions X, LLC., owner.

SUBJECT – Application May 26, 2015 – Proposed construction of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law. C6-4 zoning district.

PREMISES AFFECTED – 90 & 94 Fulton Street, corner of Fulton and Gold Streets, with a through lot portion from Gold Street to William Street, Block 00077, Lot(s) 21 & 22, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 6, 2015, acting on DOB Application No. 121192903, reads in pertinent part:

1. 91-31 Setback Regulations for Special Lower Manhattan District: For "Type 3" as defined on Map 2 in Appendix A, *street walls*, the required setbacks shall be measures from a line drawn at or parallel to the *street line* so that as least 70 percent of the *aggregate width of street walls* of the *building* at the minimum base height are within such line and the *street line* (Street widening line).
2. GCL 35 Proposed development which rests partially within the bed of the mapped street is contrary to GCL 35 and therefore must be referred to NYC BSA for approval with any related bulk waivers pursuant to ZR 72-01(g); and

WHEREAS, a public hearing was held on this application on September 18, 2015, after due notice by publication in *The City Record*, hearing closed and then to decision on September 18, 2015; and

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

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

WHEREAS, this is an application to allow the construction of a 54-story mixed-use building (the "Building") on lot 15 of block 77, in Manhattan, which, the applicant represents, consists of former lots 15, 21, 22, and 23, all of which have been merged into the existing lot 15 to facilitate the proposed development; and

WHEREAS, the Building will be partially located within the widening line of Fulton Street; and

WHEREAS, the subject site is located in a C6-4 zoning district, and also within the Special Lower Manhattan District;

WHEREAS, the site has approximately 70.5 feet of frontage along Fulton Street, with approximately 21 percent of the proposed building footprint to be located within the widening area of Fulton Street; and

WHEREAS, by letter dated August 31, 2015, the Fire Department states that it has reviewed the proposal and does not have any objections; and

WHEREAS, by letter dated August 31, 2015, the Department of Environmental Protection ("DEP") states that: (1) there is an existing 3'-6" x 2'-4" combined sewer in the bed of Fulton Street between William Street and Gold Street; and (2) there are existing 24" diameter, 20" diameter, and 12"diameter water mains in the bed of Fulton Street at the site; and

WHEREAS, DEP further states in its August 31, 2015, letter, that it has no objections to the proposed application; and

WHEREAS, by letter dated August 27, 2015, the Department of Transportation ("DOT") states that: (1) according to the Manhattan Borough President's Topographical Bureau, Fulton Street from William Street to Gold Street is mapped at a 90'-0" width on the Final City Map; (2) the City does not have tittle to the southerly portion within Block 77; (3) the improvement of Fulton Street at this location is not presently included in DOT's Capital Improvement Program; and

WHEREAS, DOT further notes that the applicant should provide adequate sidewalks that are aligned with the surrounding properties; and

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

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non-compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, in particular, the Board notes that, if the built width of Fulton Street (rather than its wider, mapped width) were used to measure the setbacks required under ZR § 91-32, such setbacks would comply; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

Therefore it is Resolved, that the Board modifies the decision of the DOB, dated May 6, 2015, acting on DOB Application No. 121192903, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received September 18, 2015"- (1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped;

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

THAT 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 on September 18, 2015.

ZONING CALENDAR

156-14-BZ

APPLICANT – Lewis E. Garfinkel, for Harold Feder, owner.

SUBJECT – Application July 3, 2014 – Special Permit (§73-621) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141(b)). R4 zoning district.

PREMISES AFFECTED – 1245 East 32nd Street, east side of East 32nd Street 350', Block 07650, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 1, 2014, acting on DOB Application No. 320595049, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed floor area ratio exceeds .75; and

WHEREAS, this is an application under ZR §§ 73-621

and 73-03, to permit, within an R4 zoning district the proposed enlargement of a single-family dwelling which does not comply with the zoning requirements for floor area ratio contrary to ZR § 23-141(b); and

WHEREAS, a public hearing was held on this application on August 18, 2015 after due notice by publication in *The City Record*, and then to decision on September 18, 2015; and

WHEREAS, Commissioner Montanez and Commissioner Ottley-Brown performed inspections of the subject site and neighborhood; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site has 30 feet of frontage along the east side of East 32nd Street, between Avenue L and Avenue M, within an R4 zoning district, in Brooklyn; and

WHEREAS, the site contains approximately 3,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story single-family dwelling which contains approximately 1,585.77 sq. ft. of floor area (.53 FAR); and

WHEREAS, the applicant proposes to enlarge the first and second floors of the subject building, and add an attic, so that the floor area will increase to 2,963 sq. ft. (.99 FAR); and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the subject building existed as of that date; and

WHEREAS, the applicant submitted recorded deeds to establish that the subject premises existed before the relevant dates; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a building containing a residential use provided that the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, the Board notes that ZR § 73-621 also permits, in the subject zoning district, the additional floor permitted under that provision to be computed using a base floor area ratios including the floor area permitted under a sloping roof with a structural headroom between five and eight feet when such space is provided in the building; and

WHEREAS, as to the floor area ratio, the Board finds that the proposed floor area does not exceed 110 percent of the maximum permitted; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family dwelling which does not comply with the zoning requirements for floor area ratio contrary to ZR § 23-141(b); *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "March 19, 2015"–(11) sheets and "June 3, 2015"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,963 sq. ft. (.99 FAR), as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, September 18, 2015.

243-14-BZ
CEQR #15-BSA-081R

APPLICANT – Eric Palatnik, PC, for Victorystar, LTD, owner.

SUBJECT – Application October 9, 2014 – Special Permit (§73-243) to permit the legalization and continued use of an existing eating and drinking establishment (UG 6) with an accessory drive-through. C1-2/R3X zoning district.

PREMISES AFFECTED – 1660 Richmond Avenue, Richmond Avenue between Victory Boulevard and Merrill Avenue. Block 02236, Lot 133. Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated September 14, 2014, acting on DOB Application No. 520204207, reads:

> An eating and drinking establishment (Use Group 6) located in a C1-2 zoning district with an accessory drive through facility is contrary to section 32-15 of the NYC Zoning Resolution …. Provide updated Board of Standards and Appeals approval pursuant to sections 32-31 and 73-243 of the NYC Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to legalize, on a site within an R3X (C1-2) zoning district, the operation of an existing accessory drive-through facility operating in conjunction with an eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on June 16, 2015, with a continued hearing on August 18, 2015, and then to decision on September 18, 2015; and

WHEREAS, Commissioner Montanez and Commissioner Ottley-Brown performed inspections of the subject site and neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends that the Board approve this application; and

WHEREAS, the subject site located on the west side of Richmond Avenue, between Merrill Avenue and Victory Boulevard, an R3X (C1-2) zoning district, in Staten Island; and

WHEREAS, the site has approximately 102 feet of frontage along Richmond Avenue, and approximately 18,455 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated as a McDonald's franchise) with approximately 4,106 sq. ft. of floor area, an accessory drive-through, and 15 on-site accessory parking spaces; and

WHEREAS, the existing accessory drive-through was added to the eating and drinking pursuant to a special permit issued by the Board under BSA Cal. No. 775-89-BZ, the term of which expired on June 11, 1996; and

WHEREAS, because the previously-issued special permit is expired, the instant application seeks a new special permit, as per §1-07.3(b)(4)) of the Board's Rules of Practice and Procedure; 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 site 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 12 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 notes that the site is adjacent, on two sides, to the Coral Lanes Shopping Center, and the site is benefitted by an easement that permits egress not only onto Richmond Avenue but also through the shopping center parking lot; and

WHEREAS, the applicant also states that the drive through facility has been maintained at the site for 23 years without causing an adverse impact on the adjoining properties; and

WHEREAS, in addition, the applicant submitted a zoning analysis form reflecting that the facility complies with the accessory off-street parking regulations for the R3X (C1-2) zoning district; there are 15 accessory spaces on the site, one space in excess of the 14 required spaces; and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject site, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; 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 site and states, *inter alia* that the drive through menu board at the site adjusts its volume based on outdoor ambient noise, thus mitigating any adverse impact of the amplification, and that waste removal at the site will occur five times per week and that trash will be enclosed on three sides by a brick wall at least six feet high; 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, 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. 15-BSA-081R dated

October 8, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities 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 an R3X (C1-2) 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 §32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 16, 2015"- (5) sheets; and *on further condition*:

THAT the term of this grant will expire on September 18, 2020;

THAT the outdoor menu soundboard utilized by the operator of the subject site will feature automatic sound adjustment to decrease with a reduction in ambient sound;

THAT waste removal at the site will occur five times per week;

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 all signage, including directional signs, will conform to applicable 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 18, 2015.

258-14-BZ
CEQR #15-BSA-088K

APPLICANT – Sheldon Lobel, P.C., for Henry Atlantic Partners LLC, owner.

SUBJECT – Application October 16, 2014 – Variance (§72-21) to permit the construction of a 4-story mixed-use building of an existing with commercial use on the first floor in a (R6) zoning district located in Cobble Hill Historic District.

PREMISES AFFECTED – 112 Atlantic Avenue, southeast corner of the intersection formed by Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 9, 2014, acting on DOB Application No. 320626505, reads, in pertinent part:

ZR 22-12: The proposed commercial use is not permitted in the residence district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District, commercial use on the first floor of a proposed four-story, mixed-use building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on April 21, 2015, after due notice by publication in the *City Record*, with continued hearings on June 23, 2015 and September 1, 2015, and then to decision on September 18, 2015; and

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

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

WHEREAS, the site is located on the southeast corner of the intersection at Atlantic Avenue and Henry Street, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District; and

WHEREAS, the site has 97 feet of frontage along Atlantic Avenue and 80 feet of frontage along Henry Street, and approximately 7,785 sq. ft. in lot area; and

WHEREAS, the site is occupied by a one-story Use Group ("UG") 16 gasoline service station and repair shop (a use which is permitted pursuant to a pre-1961 variance), which contains approximately 1,590 sq. ft. of floor area, a pump island, an auto repair shop with three service bays, and four petroleum storage tanks; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 22, 1960 when, under BSA Cal. No. 741-59-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubritorium, minor auto repairs, car wash, office, sales and

storage and parking of motor vehicles for a term of 15 years; and

WHEREAS, the grant under BSA Cal. No. 741-59-BZ was amended, and the term was extended at various times; and

WHEREAS, On February 8, 2000, under BSA Cal. No. 195-99-BZ, the Board granted an application under ZR § 11-411 to re-establish the expired variance granted under BSA Cal. No. 741-59-BZ, and on January 12, 2010, extended the term of the variance granted under BSA Cal. No. 195-99-BZ for a period of ten years, to expire on November 10, 2019; and

WHEREAS, the applicant proposes to demolish the existing service station and repair shop and construct a four-story, mixed-use building, with approximately 6,000 sq. ft. of ground floor retail floor area with 2,100 sq. ft. of accessory floor space in the cellar, and approximately 16,500 sq. ft. of residential floor area; and

WHEREAS, because the proposed retail space is not permitted in the subject R6 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 practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) environmental contamination resulting from the longstanding operation of a gasoline service station and automotive repair shop which results in excessive premium construction costs; (2) the absence of the commercial overlay which characterizes frontage along the major avenue on which the site is located, which puts the property at a relative disadvantage to other properties in the surrounding area; and (3) the site's dramatically underbuilt status, which puts it at a disadvantage relative to the other overbuilt and non-complying buildings in its immediate vicinity; and

WHEREAS, as to the environmental contamination at the site, the applicant states that its consultants undertook soil borings which revealed extensive gasoline related constituents in the vicinity of the trench drain at the western edge of the site, and notes that its consultants were unable to take borings east of this point because of additional subsurface storage tanks likely to have further contaminated the site; and

WHEREAS, the applicant states that in addition to elevated levels of VOCs and solvents, all of which must be removed from the site but which are likely attributed to the character of the fill present on the site, lead was identified in the soil at the site at significantly elevated levels sufficient to constitute a hazardous waste, which is not characteristic of typical fill; and

WHEREAS, the applicant states that in addition to the lead-based hazardous waste at the site, excessive levels of Tetrachloroethene, or "Perc," were identified as the site; and

WHEREAS, the applicant notes that Atlantic Avenue is, in the area surrounding the site, benefitted by a commercial overlay, but that the site is located on one of two blocks on the south side of the street which is not within such commercial overlay and, therefore, the site is uniquely burdened, relative to the surrounding area, in that the ground floor retail which characterizes the neighborhood is not permitted as-of-right; and

WHEREAS, the applicant argues that the prohibition on a retail use at the site amidst blocks of frontage characterized by such use on the ground floor, contributes to the site's economic hardship, as the site is located within a neighborhood that is commercial in nature, but unable to benefit from commercial rent; and

WHEREAS, lastly, the applicant argues that the site is dramatically underbuilt, with an FAR of .2, and is the second most underbuilt property within 600 feet of the site (the first being an accessory parking garage adjacent to a larger property which is in common ownership with the underbuilt garage); and

WHEREAS, the applicant submits that the fact that the site is dramatically underbuilt, relatively disadvantaged in that it was excluded from the commercial overlay which characterizes Atlantic Avenue, and severely contaminated, in the aggregate, constitute a hardship; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, 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 provided a financial analysis for (1) a four-story plus cellar residential building with the maximum allowable residential zoning floor area and 10 cellar-level parking spaces with an automated parking system (the "As-of-Right Residential Plan"); (2) a five-story plus cellar mixed-use building with a two-story community facility (ambulatory diagnostic care) base and three upper residential floors (the "As-of-Right Community Facility Plan") and (3) the proposal; and

WHEREAS, the applicant represents that only the proposal would provide a reasonable return; and

WHEREAS, specifically, the applicant argues that with respect to the As-of-Right Residential Plan, the parking income along with potential residential condominium sales is not sufficient to produce an economically viable project because ground floor residential use is an anomaly along the Atlantic Avenue frontage and it presents a discounted valuation when located on the first floor of the busy commercial thoroughfare; and

WHEREAS, the applicant further argues that such discounted residential ground floor exacerbates the economic harm caused by the site's environmental conditions, making a reasonable return unrealistic; and

WHEREAS, the applicant also argues that the As-of-Right Community Facility Plan is inappropriate in this location; and

WHEREAS, specifically, the applicant represents that: (1) the former locally-oriented medical facility known as Long Island College Hospital recently closed, dramatically reducing demand for nearby spin-off medical space; (2) given the Long Island College Hospital closure there is a lower absorption rate for newly constructed medical

facilities in the neighborhood; (3) rents for community facility are much lower than retail rents and therefore do not sustain the proposed new construction; (4) designing two floors of community facility space within the proposed building, which is subject to a 50-foot height limit, reduces ceiling heights throughout the residential portion of the building, thereby significantly reducing the economic return from the sale of the residential units therein; (5) the two-floor community facility use creates the need for dual and separate cores, creating space and cost inefficiencies; and (6) if the community facility tenant at the site used it as an urgent care facility, such use would have a significant detrimental impact on the value of the residential units on the upper floors of the proposed building; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that the site is located on the southeast corner lot of Atlantic Avenue and Henry Street, an area with a historic character defined by brownstone buildings and its mixed-use character; the lack of curb cuts along Atlantic Avenue makes it a pedestrian-friendly neighborhood and the proliferation of ground-floor retail and eating and drinking establishments greatly enhance the neighborhood's appeal; and

WHEREAS, the applicant also notes that the existing gasoline service station and repair shop is out of character with the neighborhood and that its location on a corner lot makes it a danger to pedestrians in that approximately 75% of the site's sidewalk frontage – all corner – is interrupted by three curb cuts;

WHEREAS, the applicant also argues that replacing the legal non-conforming gasoline service station with a residential and commercial mixed-use building would bring the site into greater compliance with the applicable zoning regulations; and

WHEREAS, on December 16, 2014, the New York City Landmarks Preservation Commission (the "LPC") issued Certificate of Appropriateness No. 16-6016 (expires December 16, 2020) for the proposed building; and

WHEREAS, the Certificate of Appropriateness states that:

> [w]ith regard to this proposal, the Commission found that the existing gas station is not a building for which the Cobble Hill Historic District was designated and its demolition will not diminish the special architectural or historic character of the historic district; that the facades of the proposed new building will maintain the street wall and are in keeping with the scale of buildings found in this district and on this block; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 15-BSA-088K, dated February 16, 2015; and

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

WHEREAS, the New York City Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials; and

WHEREAS, DEP reviewed and accepted the June 2015 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project;

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R6 zoning district, within a Limited Height District, within the Cobble Hill Historic District, commercial use on the first floor of a proposed four-story, mixed-use building with accessory floor space in the cellar, contrary to ZR § 22-00, *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 July 30, 2015"- twelve (12) sheets; and *on further condition*:

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 all construction shall be in conformance with the LPC Certificate of Appropriateness No. 16-0016, dated December 16, 2014;

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided DOB with DEP's approval of the Remedial Closure Report;

THAT 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 18, 2015.

19-15-BZ
CEQR #15-BSA-149Q
APPLICANT – Herrick, Feinstein LLP, for Andon Investment LP, owner; Retro Fitness of NY LLC, lessee.
SUBJECT – Application January 29, 2015 – Special Permit (73-36) to permit a physical culture establishment (*Retro Fitness*) to be located at second-story level (plus entrance at ground-floor level) of a new two-story building. R7-1/C2-2 zoning district.
PREMISES AFFECTED – 92-77 Queens Boulevard, Through-block site with frontage on Queens Boulevard and 93 Street, between 62 Avenue and Harding Expressway, Block 02075, Lot 39, Borough of Queens.
COMMUNITY BOARD #6Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 5, 2015, acting on DOB Application No. 42094484, reads, in pertinent part:

> Physical Culture Establishment not permitted as of right in C2-2 district without a special permit by board of standards and appeals; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an R7-1(C2-2) zoning district, a physical culture establishment (the "PCE") on the first and second floor of a four-story, with cellar, mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 25, 2015 after due notice by publication in the *City Record*, and then to decision on September 18, 2015; and

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

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

WHEREAS, the subject site is located on a through lot with approximately 105 feet of frontage along Queens Boulevard and 100 feet of frontage along 93rd Street, between 62nd Avenue and the Long Island Expressway, in Queens; and

WHEREAS, the site contains approximately 20,634 sq. ft. of lot area and is located within an R7-1(C2-2) zoning district, the subject building is currently under construction and, when completed, it will be a four-story, with cellar, building containing approximately 41,208 sq. ft. of floor area, with commercial retail use on the ground floor and transient hotel use on the third and fourth floors; and

WHEREAS, the new building will contain a total of 84 accessory parking spaces, which is in excess of the 50 accessory parking required by the PCE; and

WHEREAS, the PCE will occupy approximately 780 sq. ft. of floor are on the ground floor and the entire second floor of the building (14,348.42 sq. ft.), for a total of 15,128.42 sq. ft. of floor area; and

WHEREAS, the PCE will operate as Retro Fitness; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:00 a.m. to 11:00 p.m.; Saturday and Sunday, from 5:00 a.m. to 7:00 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 Checklist action discussed in the CEQR Checklist No. 15-BSA-149Q, dated January 29, 2015; 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 legalize, on a site within an R7-1(C2-2) zoning district, a physical culture establishment (the "PCE") on the first and second floor of a four-story, with cellar, mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 3, 2015," - Four (4) sheets and "Received September 17, 2015," - Two (2) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on September 18, 2025;

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

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by September 18, 2019;

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

THAT the approved plans shall be considered approved only for the portions related to the 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 18, 2015.

29-15-BZ
CEQR #15-BSA-157M
APPLICANT – Law Office of Stuart Klein, for 3rd and 60th Associates, LP, owner; Flywheel Sport, Inc., lessee.
SUBJECT – Application February 18, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Flywheel Sports*) at the cellar level of an existing building. C6-4 zoning district.
PREMISES AFFECTED – 200-204 East 61st Street aka 1011-102 3rd Avenue, east side of 3rd Avenue between East 60th and East 61st Street, Block 01415, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Application granted.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 21, 2015, acting on DOB Application No. 122167939, reads, in pertinent part:

ZR32-31/ZR73-36 The proposed Physical Culture Establishment in zoning district C1-9 or R8B is not a permitted use as of right. A special permit is required from the Board of Standards and Appeals as per the cited zoning sections of the Zoning Resolution.

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site partially within a C1-9 zoning district, and partially within an R8B zoning district, a physical culture establishment (the "PCE") which operates in the sub-cellar of a 42-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 25, 2015, after due notice by publication in the *City Record*, and then to decision on September 18, 2015; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Third Avenue, between East 60th Street and East 61st Street, in Manhattan; and

WHEREAS, the site contains approximately 19,983 sq. ft. of lot area and is located partially within a C1-9 zoning district, and partially within an R8B zoning district, the building occupying the site is a 42-story mixed-use building with commercial uses in the sub-cellar, cellar, and ground floor, with residential uses above; and

WHEREAS, the PCE occupies approximately 182 sq. ft. of floor area on the ground floor of the building and approximately 3,898 sq. ft. of floor space in a portion of the building's sub-cellar;

WHEREAS, the PCE operates as Flywheel Sports Inc. d/b/a Flywheel; and

WHEREAS, the PCE operates seven days a week, from 5:30 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, because the subject application is for a legalization, the Board asked the applicant to confirm that it has installed and received sign-off for the sprinkler system

and has filed a permit for the installation of a fire alarm system within the PCE space; and

WHEREAS, the applicant states that it has installed and received sign-off for the sprinkler system, and has submitted proof thereof to the Board; the applicant states further that it has installed the fire alarm system and provided the Board with photographs of the installed system at the subject premises; and

WHEREAS, in light of the foregoing, the Fire Department states that it has no objection to the proposal; and

WHEREAS, at hearing, the Board inquired as to sound attenuation at the PCE; and

WHEREAS, the applicant states that the PCE space is above the building's parking garage and that the space above the PCE space is occupied by a portion of the ground floor restaurant and the building's courtyard; and

WHEREAS, the applicant provided the Board with evidence of the sound attenuation measures in place at the PCE premises, including information related to the platforms on which the spin studio bicycles sit, which include neoprene isolation pads and kinetic isolator bushing assemblies; and

WHEREAS, the Board asked for clarification of the second means of egress from the PCE space; and

WHEREAS, in response, the applicant submitted an amended existing/proposed conditions plan showing the emergency door at the sub-cellar which leads to a staircase that allows for access to the street; and

WHEREAS, the applicant states that 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, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit; 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 Checklist action discussed in the CEQR Checklist No. 15-BSA-157M, dated February 17, 2015; 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 legalize, on a site partially within a C1-9 zoning district, and partially within an R8B zoning district, a physical culture establishment (the "PCE") which operates in the sub-cellar of a 42-story mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 3, 2015," - Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on January 1, 2025;

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

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

THAT sound attenuation measure shall be implemented and/or maintained as shown on the BSA-approved plans;

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by September 18, 2019;

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

THAT the approved plans shall be considered approved only for the portions related to the 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 18, 2015.

40-15-BZ
CEQR #15-BSA-165M

APPLICANT – Francis R. Angelino, Esq., for 465 Lexington Avenue, LLC., owner; 8 Fit Strategies, LLC, lessee.

SUBJECT – Application March 3, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment within portions of an existing building. C5-3 zoning district. Companion case 41-15-BZ

PREMISES AFFECTED – 465 Lexington Avenue, east side between East 46th and 47th Streets, Block 01300, Lot 0020, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated February 3, 2015, acting on DOB Application No. 122240146, reads, in pertinent part:

ZR32-31/ZR73-36 The proposed Physical Culture Establishment in zoning districts C5-3 and C5-2.5 is not a permitted use as of right. A special permit is required from the Board of Standards and Appeals as per the cited zoning sections of the Zoning Resolution.

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C5-3 zoning district, and partially within a C5-2.5 zoning district, in the Special Midtown District, a physical culture establishment (the "PCE") which operates in portions of two buildings in Manhattan, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 1, 2015, after due notice by publication in the *City Record*, and then to decision on September 18, 2015; and

WHEREAS, Community Board 6, Manhattan, has no objection to the application; and

WHEREAS, the subject site is located on the east side of Lexington Avenue, between East 46th Street and East 45th Street, in Manhattan; and

WHEREAS, the site contains approximately 4,042 sq. ft. of lot area and is located within a C5-3 zoning district, the building occupying the site is a 5-story with cellar mixed-use building; and

WHEREAS, the subject PCE will occupy a portion of the cellar, first floor and second floor of the building known as and located at 465 Lexington Avenue ("465 Lexington Avenue"), and will also occupy a portion of the cellar of the adjacent 11 story with cellar mixed-use building, known as and located at 140 East 46th Street (block 1300, lot 50) ("140 East 46th Street"); and

WHEREAS, the cellars of the two buildings occupied by the subject PCE are interconnected, thus, the PCE will occupy a total of 11,477 sq. ft. of floor space, consisting of 3,669 sq. ft. of floor space in the cellar of 465 Lexington Avenue, 948 sq. ft. of floor area on the first floor of 465 Lexington Avenue, 2,371 sq. ft. of floor area on the second floor of 465 Lexington Avenue, and 4,489 sq. ft. of floor space in the cellar of 140 East 46th Street; and

WHEREAS, because the PCE will occupy two buildings, on two zoning lots, DOB has issued separate objections for each building, thus, the applicant has filed two applications with the Board; a companion to the instant application, for that portion of the PCE which is located at 140 East 46th Street, has been filed under BSA Cal. No. 41-15-BZ, and is granted herewith; and

WHEREAS, the PCE shall operate as B Fit Strategies LLC ("B Fit"), d/b/a Brick; and

WHEREAS, the PCE operates Monday through Friday, from 5:15 a.m. to 9:00 p.m., and on weekends from 7:30 a.m. to 4:00 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 Checklist action discussed in the CEQR Checklist No. 15-BSA-165M, dated March 3, 2015; 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 C5-3 zoning district, and partially within a C5-2.5 zoning district, in the Special Midtown District, a physical culture establishment (the "PCE") which will operate in portions of two buildings in Manhattan, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 16, 2015"– Two (2) sheets and "Received September 9, 2015"– Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on September 18, 2025;

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

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

THAT sound attenuation measure shall be implemented and/or maintained as shown on the BSA-approved plans;

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

THAT all DOB and related agency application(s) filed

in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by September 18, 2019;

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

THAT the approved plans shall be considered approved only for the portions related to the 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 18, 2015.

41-15-BZ
CEQR #15-BSA-166M

APPLICANT – Francis R. Angelino, Esq., for 140 East 46th Street, LLC., owner; 8 Fit Strategies, LLC, lessee.

SUBJECT – Application March 3, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment within portions of an existing building. C5-3 & C5-2.5 zoning district. Companion case 40-15-BZ

PREMISES AFFECTED – 140 East 46th Street, south east corner of East 47th Street and Lexington Avenue, Block 01300, Lot 0050, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated February 3, 2015, acting on DOB Application No. 122240146, reads, in pertinent part:

ZR32-31/ZR73-36 The proposed Physical Culture Establishment in zoning districts C5-3 and C5-2.5 is not a permitted use as of right. A special permit is required from the Board of Standards and Appeals as per the cited zoning sections of the Zoning Resolution.

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C5-3 zoning district, and partially within a C5-2.5 zoning district, in the Special Midtown District, a physical culture establishment (the "PCE") which operates in portions of two buildings in Manhattan, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 1, 2015, after due notice by publication in the *City Record*, and then to decision on September 18, 2015; and

WHEREAS, Community Board 6, Manhattan, has no objection to the application; and

WHEREAS, the subject site is a corner lot located on the southeast corner of the intersection of Lexington Avenue and East 46th Street, in Manhattan; and

WHEREAS, the site contains approximately 15,063 sq. ft. of lot area and is located partially within a C5-3 zoning district, and partially within a C5-2.5 zoning district, the building occupying the site is an 11 story with cellar mixed-use building; and

WHEREAS, the subject PCE will occupy a portion of the cellar of the subject building, known as and located at 140 East 46th Street ("140 East 46th Street"), and will also occupy a portion of the cellar, first floor and second floor of the adjacent building, which is known as and located at 465 Lexington Avenue (block 1300, lot 20) ("465 Lexington Avenue"); and

WHEREAS, the cellars of the two buildings occupied by the subject PCE are interconnected, thus, the PCE will occupy a total of 11,477 sq. ft. of floor space, consisting of 3,669 sq. ft. of floor space in the cellar of 465 Lexington Avenue, 948 sq. ft. of floor area on the first floor of 465 Lexington Avenue, 2,371 sq. ft. of floor area on the second floor of 465 Lexington Avenue, and 4,489 sq. ft. of floor space in the cellar of 140 East 46th Street; and

WHEREAS, because the PCE will occupy two buildings, on two zoning lots, DOB has issued separate objections for each building, thus, the applicant has filed two applications with the Board; a companion to the instant application, for that portion of the PCE which is located at 465 Lexington Avenue, has been filed under BSA Cal. No. 40-15-BZ, and is granted herewith; and

WHEREAS, the PCE shall operate as B Fit Strategies LLC ("B Fit"), d/b/a Brick; and

WHEREAS, the PCE operates Monday through Friday, from 5:15 a.m. to 9:00 p.m., and on weekends from 7:30 a.m. to 4:00 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 Checklist action discussed in the CEQR Checklist No.15-BSA-166M, dated March 3, 2015; 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 C5-3 zoning district, and partially within a C5-2.5 zoning district, in the Special Midtown District, a physical culture establishment (the "PCE") which will operate in portions of two buildings in Manhattan, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 16, 2015" – Two (2) sheets and "Received September 9, 2015" – Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on September 18, 2025;

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

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

THAT sound attenuation measure shall be implemented and/or maintained as shown on the BSA-approved plans;

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by September 18, 2019;

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

THAT the approved plans shall be considered approved only for the portions related to the 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 18, 2015.

75-15-BZ

APPLICANT – Sheldon Lobel, PC, for TEP Charter School Assistance, Inc., owner.

SUBJECT – Application April 3, 2015 – Variance (§72-21) to permit the construction of a school (UG 3) (*TEP Charter School*) contrary to front setback requirements (§24-522). C1-4/R7-2 zoning district.

PREMISES AFFECTED – 153-157 Sherman Avenue, 100' east of the intersection of Academy Street and Sherman Avenue, Block 02221, Lot 0005, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated April 1, 2015, acting on Department of Buildings Application No. 122147765, reads in pertinent part:

1. The proposed height and setback for a community facility building located in R7-2 Zoning District with C1-4 overlay is contrary to the maximum height above the street line of 60' and the required setback of 15', as per ZR 24-522 for community facility uses and is referred to BSA; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R7-2 (C1-4) zoning district the construction of a school building which does not comply with the zoning regulations for height and setback, contrary to ZR §24-522; and

WHEREAS, the application is brought on behalf of the TEP Charter School Assistance, Inc. (the "Applicant"), a 501(c)(4) non-profit institution which was established to advance the interests of The Equity Project Charter School (the "School"), a 501(c)(3) non-profit educational institution; and

WHEREAS, the School is a public middle school chartered in 2008 which serves low-income students who reside in Inwood, Washington Heights, and Harlem, 20 percent of whom have been identified by the New York City Department of Education ("DOE") as having special educational needs; and

WHEREAS, the School is currently operating out of 30 temporary trailers, the proposed Use Group 3 school building is intended to be a permanent location for the School; and

WHEREAS, a public hearing was held on this application on August 18, 2015, after due notice by publication in the *City Record*, and then to decision on September 18, 2015; and

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

WHEREAS, Community Board 12, Manhattan,

recommends approval of this application; and

WHEREAS, the subject site has approximately 75 feet of frontage along the south side of Sherman Avenue, between Academy Street, to the west, and West 204th Street, to the east, in an R7-2 (C1-4) zoning district, in Manhattan; the site has a depth of 160 feet and a total lot area of 12,000 sq. ft.; and

WHEREAS, the site is vacant; and

WHEREAS, the Applicant represents that, due to the presence of groundwater at depths of nine and eleven feet below the surface of the site, as well as other subsurface conditions including rock and contaminated soil (collectively, the "Subsurface Conditions"), excavation at the site has been minimized such that the lowest level of the proposed building is located four feet below street level; and

WHEREAS, the School proposes to build a six-story plus mechanical Use Group 3 school building with a complying floor area of approximately 58,559 sq. ft. (4.9 FAR) and a complying total height of approximately 85'-10"; and

WHEREAS, the proposed building will have the following existing non-compliances: (1) a wall height of approximately 63'-6" (a maximum wall height of 60'-0" is permitted as per ZR § 24-522); and (2) and a setback of 10'-0" at the sixth floor (a minimum setback of 15'-0" is required as per ZR § 24-522); and

WHEREAS, because of the aforementioned non-compliances, the School seeks a variance; and

WHEREAS, the Applicant represents that the waivers are sought to enable the School to construct a facility that meets its programmatic needs; and

WHEREAS, the School identifies the following primary programmatic needs: (1) to accommodate its student body, which consist of approximate 480 students in grades five through eight, with each grade consisting of four 30-student classes, and a core curriculum of english, social studies, math, and science; (2) to provide space for daily physical education classes; (3) to facilitate music studies for all of its students; and

WHEREAS, the Applicant represents that School requires that each of the four standard subject classrooms in each grade be adjacent to each other, as well as that fifth and sixth grade students be separated from seventh and eight h grade students to accommodate differing rules that relate to hallways; and

WHEREAS, the Applicant represents that, in order to comply with wall height and setback regulations, a full cellar with a depth of 12'-0" would have to be constructed below the proposed building, but that doing so, in light of the Subsurface Conditions would impose significant premium construction costs; and

WHEREAS, the applicant submitted a boring report and a financial analysis to substantiate its claims that the Subsurface Conditions would impose premium costs on the Applicant and School; and

WHEREAS, the Applicant further represents that an alternative complying design, without the full cellar, cannot accommodate the School's program, specifically, the required adjacencies and classroom layouts could not be accomplished and the School's music rooms would be located on different floors; and

WHEREAS, the Applicant represents that in order to meet its programmatic needs without imposing premium construction costs, it proposes to locate the building's mechanical systems on top of the building, thereby requiring the requested setback waiver; the Applicant further represents that raising the building to accommodate the Subsurface Conditions requires the wavier of the wall height regulations; and

WHEREAS, the Applicant states that because the School is a non-profit educational institution, the Board must grant it deference and allow it to rely on its programmatic needs to form the basis for its waiver requests; the applicant cites to the decisions of New York State courts in support of its claim that the school warrants deference; and

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

WHEREAS, specifically, as held in *Cornell Univ. v Bagnardi*, 68 NY2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the School along with the existing constraints of the Site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the Board notes that the a community facility, such as the Use Group 3 school building, is permitted as-of-right in the subject zoning district;

WHEREAS, the Applicant represents that the proposed street wall height is consistent with neighborhood character, which is characterized by five and six story multi-family residential buildings; and

WHEREAS, the Applicant represents further that that the height of the proposed building is consistent with other schools located within 1,000 feet of the subject site; and

WHEREAS, the Applicant states that students of the School will arrive and depart primarily by walking or public

transportation, with only 20 percent of the students utilizing yellow bus to attend the School; and

WHEREAS, the Applicant notes that the proposed building will include sound attenuation measures that comply with the NYC Noise Code (Local Law 113) and include measures for acoustical isolation; specifically, the gym will be enclosed by a minimum one foot thick cavity wall with a Sound Transmission Class ("STC") rating of approximately STC-60, and that the cafeteria will have a glass wall system with a rating of STC-32; and

WHEREAS, the Applicant notes further that the School's music rooms will have a room-within-room construction and an exterior wall which together will have a rating of STC-32; and

WHEREAS, the Applicant represents that School's gym, terrace and roof terrace will be open from 7:00 a.m. through 6:30 p.m., Monday through Friday, and from 9:00 a.m. through 6:30 p.m. on weekends when extracurricular activities are held; and

WHEREAS, the Applicant represents that food will be prepared in the kitchen and served in the cafeteria, and that food and waste refuse will be stored onsite in an indoor refrigerated facility until it is brought to the sidewalk for collection; and

WHEREAS, based upon the above, the Board finds that the subject variance will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the Applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the physical constraints of the site; and

WHEREAS, the Applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the Applicant or School, or a predecessor in title; and

WHEREAS, the Applicant states that the requested bulk waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, as discussed, the Applicant analyzed two complying developments, neither of which could accommodate the School's programmatic needs; and

WHEREAS, the Board therefore finds that the requested waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR, Part 617.4; 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 Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R7-2 (C1-4) zoning district the construction of a school building which does not comply with the zoning regulations for height and setback, contrary to ZR §24-522; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 11, 2015"–(13) sheets; and *on further condition*:

THAT the proposed buildings will have the following parameters: (1) floor area of 58,559 sq. ft.; (2) an FAR of 4.9 FAR, (3) a maximum wall height of 63'-6" and a total height of approximately 85'-10"; and (4) a setback of 10'-0" at the sixth floor, all as depicted on the Board-approved plans;

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

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

THAT exterior lighting at night shall be limited to that which is necessary to meet egress requirements;

THAT there shall be no rooftop sound amplification;

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, September 18, 2015.

60-14-BZ
APPLICANT – Law Office of Jay Goldstein, PLLC, for Sephardic Congregation of Kew Gardens Hills, owners.
SUBJECT – Application April 11, 2014 – Variance (§72-21) to enlarge a community facility (*Sephardic Congregation*), contrary to floor lot coverage rear yard, height and setback (24-00). R4-1 zoning district.
PREMISES AFFECTED – 141-41 72nd Avenue, 72nd Avenue between Main Street and 141st Street, Block 6620, Lot 41, Borough of Queens.
COMMUNITY BOARD #8Q
ACTION OF THE BOARD – Laid over to October 27, 2015, at 10 A.M., for continued hearing.

61-15-BZ
APPLICANT – Deirdre A. Carson, Esq., for 540 W. 26th St. Property Investors llA, LLC., owner; Avenue World Holdings LLC., lessee.
SUBJECT–Application March 19, 2015 – Special Permit (§73-19) to permit the operation of a portion of a school known as Avenues (*The School*) Use Group 3A, located in a M1-5 zoning district.
PREMISES AFFECTED – 540 West 26th Street, an interior lot on the south side of West 26th Street, 100' east of intersection of 11th Avenue and West 26th Street, Block 0697, Lot 56, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for deferred decision.

179-14-BZ
APPLICANT – Law Office of Lyra J. Altman, for Lillian Romano and Elliot Romano, owners.
SUBJECT – Application July 29, 2014 – Special Permit (§73-622) for the enlargement and conversion of an existing two family residence to single family residence contrary to the rear yard requirement (ZR 23-47). R5 zoning district.
PREMISES AFFECTED – 1937 East 14th Street, east side of East 14th Street between Avenue S and Avenue T, Block 07293, Lot 74, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to October 27, 2015, at 10 A.M., for continued hearing.

270-14-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Carnegie Park land Holding LLC c/o Related Cos., owner; Equinox-East 92nd LLC, lessee.
SUBJECT – Application November 3, 2014 – Special Permit 73-36 to allow the physical culture establishment (*Equinox*) within portions of a new mixed use building, located within an C4-6 zoning district.
PREMISES AFFECTED – 203 East 92nd Street, north side of East 92nd Street, 80 ft. east of intersection with 3rd Avenue, Block 01538, Lot 10, Borough of Manhattan.
COMMUNITY BOARD #8M
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 16, 2015, at 10 A.M., for decision, hearing closed.

SPECIAL HEARING
FRIDAYAFTERNOON, SEPTEMBER 18, 2015
1:00 P.M.

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

ZONING CALENDAR

36-15-BZ
CEQR #15-BSA-163K
APPLICANT – Warshaw Burstein, LLP, for CAC Atlantic, LLC, owner; 66 Boerum Place Fitness Group, LLC., lessee.
SUBJECT – Application February 25, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on portions of the cellar, first and second floors of a new building. C6-2A (SDBD) zoning district.
PREMISES AFFECTED – 66 Boerum Place aka 239 Atlantic Avenue, northwest corner of the intersection formed by Atlantic Avenue and Boerum Place, Block 00277, Lot(s) 1 & 10, Borough of Brooklyn.
COMMUNITY BOARD #2BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated February 5, 2015, acting on DOB Application No. 320728735, reads, in pertinent part:

> The proposed Physical Culture Establishment is not permitted as of right in a C6-2A zoning district as per ZR32-10 …; 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 Downtown Brooklyn District, a physical culture establishment (the "PCE") on the cellar, first, and second floor of an 11-story mixed use building which is under construction, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 18, 2015 after due notice by publication in the *City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Montanez and

Commissioner Ottley-Brown performed inspections of the subject site and neighborhood; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection formed by Atlantic Avenue and Boerum Place, within a C6-2A zoning district, within the Special Downtown Brooklyn District, in Brooklyn; and

WHEREAS, the site has approximately 172 feet of frontage along Atlantic Avenue, 173 feet of frontage along Boerum Place, and 211 feet of frontage along State Street, and contains approximately 187,349 sq. ft. of lot area; and

WHEREAS, the building which is being constructed at the site will have a height of 120 feet and will contain a mix of commercial, community facility and residential uses; and

WHEREAS, the PCE will occupy approximately 16,737 sq. ft. of floor space, as follows: 10,970 sq. ft. of floor space in the cellar of the building; 628 sq. ft. of floor area on the first floor, and 5,139 sq. ft. of floor area on the second floor; and

WHEREAS, the PCE will operate as Planet Fitness; and

WHEREAS, the hours of operation for the PCE will be 24 hours per day, seven days per week; 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 Checklist action discussed in the CEQR Checklist No. 15-BSA-163K, dated February 25, 2015; 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 a C6-2A zoning district, within the Special Downtown Brooklyn District, a physical culture establishment (the "PCE") on the cellar, first, and second floor of an 11-story mixed use building which is under construction, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 31, 2015," – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on September 18, 2025;

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

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by September 18, 2019;

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

THAT the approved plans shall be considered approved only for the portions related to the 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 18, 2015.

269-14-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 89-40 Realty LLC/Yaron Rosenthal, owner; Sun Star Services, lessee.

SUBJECT – Application November 3, 2014 – Special Permit §73-36) to permit the physical culture establishment *(Massage Envy Spa)* on the first floor level of an existing commercial building in a C2-2 in R4 zoning district.

PREMISES AFFECTED – 89-44 Metropolitan Avenue, southeast corner of Metropolitan Avenue and Aubrey Avenue, Block 03872, Lot 33, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to November 17, 2015, at 10 A.M., for continued hearing.

72-15-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Florence Polizzotto, owner; Blink Flatlands Avenue, Inc., lessee.
SUBJECT – Application March 31, 2015 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within an existing commercial building under alteration. C2-3(R5D+R4-1) zoning district.
PREMISES AFFECTED – 9029 Flatlands Avenue, northeast corner of intersection of Flatlands Avenue and East 92nd Street, Block 08179, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #18BK
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 September 22, 2015, at 10 A.M., for decision, hearing closed.

78-15-BZ
APPLICANT – Eric Palatnik, P.C., for 201 East 66th Street LLC., owner; 66th Street Fitness Corp., lessee.
SUBJECT – Application April 9, 2015 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Crunch Fitness*) on the first floor and sub-cellar of a twenty one (21) story mixed-use building. C1-9 zoning district.
PREMISES AFFECTED – 201 East 66th Street aka 1131 Third Avenue, between 66th and 67th Street, Block 01421, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #8M
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 27, 2015, at 10 A.M., for decision, hearing closed.

Ryan Singer, Executive Director